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# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914

No. ~~757~~ 454

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JOHN A. S. BROWN AND FRANK E. SCHERMER-  
HORN, AS TRUSTEE FOR CLARA SCHERMER-  
HORN, UNDER THE LAST WILL AND TESTA-  
MENT OF THOMAS CUNNINGHAM, DECEASED,

vs.

AUSTIN B. FLETCHER, AS TESTAMENTARY TRUS-  
TEE OF CONRAD MORRIS BRAKER UNDER  
THE LAST WILL AND TESTAMENT OF CON-  
RAD BRAKER, JR., DECEASED, AND CONRAD  
MORRIS BRAKER.

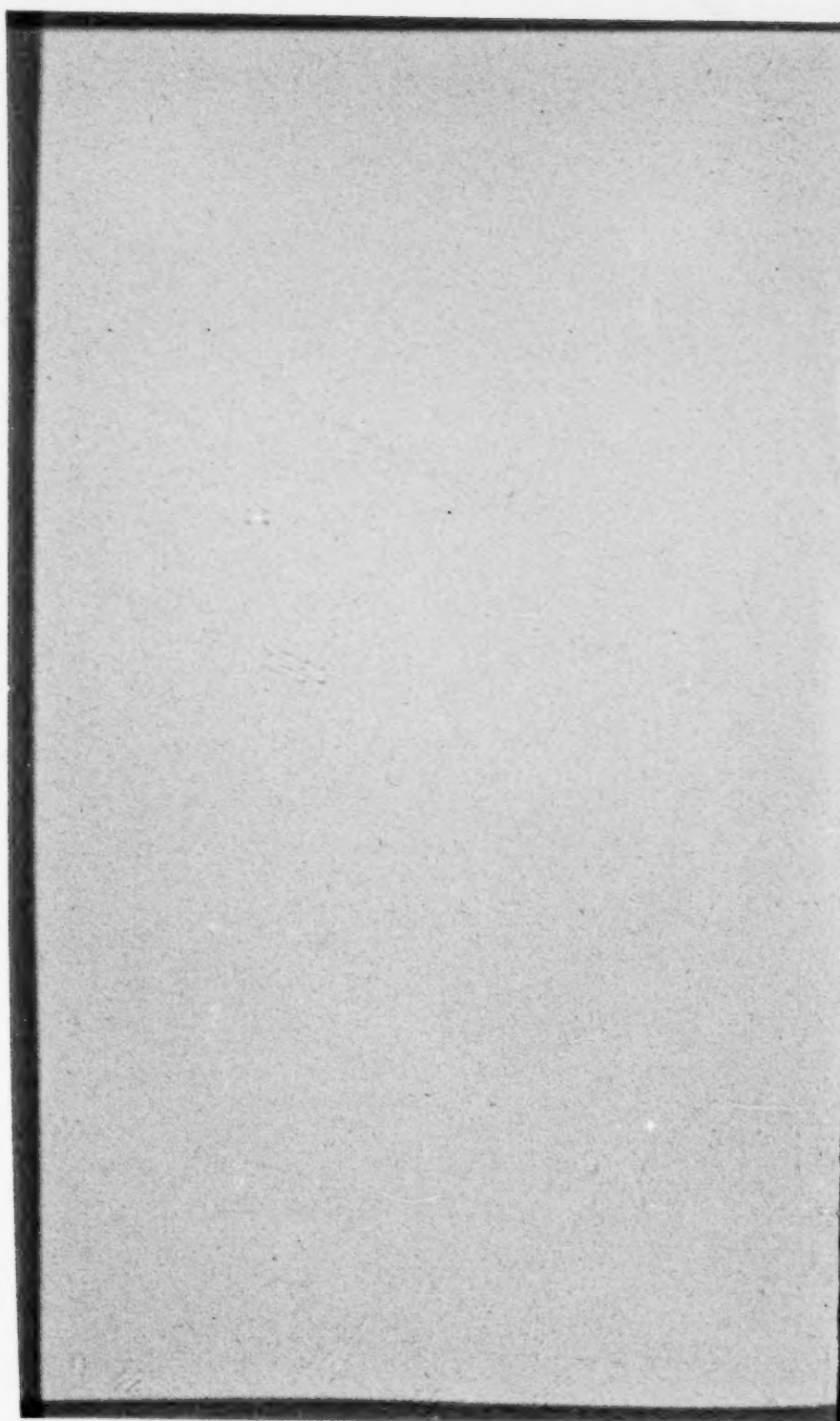
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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK.

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FILED Apr 20, 1914.

24178





# Supreme Court of the United States.

OCTOBER TERM, 1913.

No. .

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JOHN A. S. BROWN AND FRANK E. SCHERMERHORN, AS TRUSTEE FOR CLARA SCHERMERHORN, UNDER THE LAST WILL AND TESTAMENT OF THOMAS CUNNINGHAM, DECEASED,

*vs.*

AUSTIN B. FLETCHER, AS TESTAMENTARY TRUSTEE OF CONRAD MORRIS BRAKER, UNDER THE LAST WILL AND TESTAMENT OF CONRAD BRAKER, JR., DECEASED, AND CONRAD MORRIS BRAKER.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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**BILL OF COMPLAINT.**

(Filed February 25, 1913.)

IN THE

District Court of the United States,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

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Eq. 10. No. 112.

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JOHN A. S. BROWN, a citizen of the State of Pennsylvania, and FRANK E. SCHERMERHORN, as Trustee for Clara Schermerhorn, under the Last Will and Testament of Thomas Cunningham, deceased, and a citizen of the State of Pennsylvania,

*versus*

AUSTIN B. FLETCHER, as Testamentary Trustee of Conrad Morris Braker, under the Last Will and Testament of Conrad Braker, Jr., deceased, and a citizen of the State of New York, and CONRAD MORRIS BRAKER, a citizen of the State of New York.

*To the Honorable the Judges of the District Court of the United States for the Southern District of New York:*

JOHN A. S. BROWN, of the City of Philadelphia, State of Pennsylvania, and a citizen of the said State of Pennsylvania, and FRANK E. SCHERMERHORN, as Trustee for Clara Schermerhorn, under the Last Will and Testament of Thomas Cunningham, deceased, also of the City of Philadelphia, State of Pennsylvania, and a citizen of the said State of Pennsylvania, bring this

their Bill of Complaint against AUSTIN B. FLETCHER, as Testamentary Trustee of Conrad Morris Braker, under the Last Will and Testament of Conrad Braker, Jr., deceased, and a citizen of the State of New York, and CONRAD MORRIS BRAKER, a citizen of the State of New York, and thereupon your Orators complain and say:

*First.*—That your Orator, JOHN A. S. BROWN, is a resident of the City of Philadelphia, State of Pennsylvania, and a citizen of the said State of Pennsylvania; and that your Orator, FRANK E. SCHERMERHORN, is Trustee for Clara Schermerhorn, under the Last Will and Testament of Thomas Cunningham, deceased, and is a resident of the City of Philadelphia, State of Pennsylvania, and a citizen of the said State of Pennsylvania; that the respondent, AUSTIN B. FLETCHER, is Testamentary Trustee of Conrad Morris Braker, under the Last Will and Testament of Conrad Braker, Jr., deceased, and is a resident of the City of New York, State of New York, and a citizen of the said State of New York, and that the respondent, CONRAD MORRIS BRAKER, is a resident of the City of New York, State of New York, and a citizen of the said State of New York.

*Second.*—That the jurisdiction of this Court depends upon the diverse citizenship of the parties hereto, and the amount in controversy exceeds the sum of Three Thousand Dollars (\$3000).

*Third.*—That the aforementioned Conrad Braker, Jr., departed this life on the twenty-first day of July, 1890, having first made and published his Last Will and Testament in writing, bearing date the twentieth day of February, 1890, a copy of which is hereunto annexed, marked Exhibit "A" and made a part of this

Bill of Complaint to all intents and purposes and with the same force and effect as if herein fully and at large set forth. That the said Conrad Braker, Jr., at the time of his decease, was a resident of the City, County and State of New York.

*Fourth.*—That on the thirteenth day of September, 1890, the said Will was duly admitted to probate by the Surrogate's Court of the County of New York, in the State of New York, and there recorded in Book of Wills, No. 435, at page 383 and following.

That thereupon letters testamentary were issued out of the said Court to Henry J. Braker and Frances J. Braker, as executor and executrix respectively of the said Last Will and Testament; and the said executor and executrix took upon themselves the duty of administering the estate of the said Conrad Braker, Jr., deceased, and received and collected the assets thereof.

*Fifth.*—That out of and from the assets of the said estate so received and collected as aforesaid, the said aforementioned executor and executrix paid over to Henry J. Braker the sum of Fifty Thousand Dollars (\$50,000) in trust for the special benefit of Conrad Morris Braker, the son of the aforesaid testator, Conrad Braker, Jr., such payment being made in accordance with the provisions of the "Fifteenth" paragraph of the aforementioned Will of the said testator, and to be held in trust by the said trustee as likewise provided for and directed by the said paragraph of the said Will.

*Sixth.*—That by an order and decree of the said Surrogate's Court of the County of New York, entered the sixteenth day of November, 1897, Austin B.

Fletcher, defendant herein, was appointed as Testamentary Trustee for Conrad Morris Braker under the aforementioned Last Will and Testament of Conrad Braker, Jr., deceased, to succeed the said Henry J. Braker, and to execute the unexecuted trusts of which the said Henry J. Braker was trustee under the said Will, and then and there received, and now holds, said trust fund.

*Seventh.*—That under and by virtue of the aforementioned "Fifteenth" paragraph of the Last Will and Testament of the said Conrad Braker, Jr., deceased, the aforementioned Conrad Morris Braker became entitled to receive and to have paid to him the principal sum of Fifty Thousand Dollars (\$50,000) so held in trust for him as aforesaid, if and when he shall attain the age of fifty-five years.

*Eighth.*—That the said Conrad Morris Braker attained the age of fifty-five years on the twenty-fifth day of February, 1913, and he or his assigns then and there became entitled to receive and to have paid to him, or them, the principal sum of Fifty Thousand Dollars (\$50,000) so held in trust for him as aforesaid under the "Fifteenth" paragraph of the said Will.

*Ninth.*—That on the eighteenth day of April, 1901, and by a certain instrument in writing, bearing date of that day, the said Conrad Morris Braker sold and assigned to one Frank L. Rabe, seven-tenths of all the estate, right, title and interest of the said Conrad Morris Braker of, in and to the principal sum of Fifty Thousand Dollars (\$50,000), to which he, the said Conrad Morris Braker, was entitled under and by virtue of the "Fifteenth" clause of the Last Will and Testament of the said Conrad Braker, Jr., deceased. That



the said assignment was duly recorded in the Office of the Register of the County of New York, in Liber 4 of Miscellaneous Instruments, page 74, on the twenty-seventh day of April, 1901; and also further recorded in the Office of the Surrogates of the County of New York, in Liber 3 of Conveyances and Mortgages of Interests in Decedents' Estates, page 195, on the twenty-first day of December, 1906. A copy of the said assignment is hereunto annexed, marked Exhibit "B" and is made a part of this Bill of Complaint to all intents and purposes and with the same force and effect as if herein fully and at large set forth.

*Tenth.*—That on the first day of October, 1901, and by a certain instrument in writing, bearing date of that day, the said Frank L. Rabe, duly sold and assigned unto the New York Finance Company, a corporation organized and existing under and by virtue of the laws of the State of New York, all the estate, right, title and interest of the said Conrad Morris Braker under clause "Fifteen" in the Will of Conrad Braker, Jr., deceased. That the said assignment was duly recorded in the Office of the Surrogates of the County of New York, in Liber 3 of Conveyances and Mortgages of Interests in Decedents' Estates, page 200, on the twenty-first day of December, 1906.

That a copy of the said assignment is hereunto annexed, marked Exhibit "C" and is made a part of this Bill of Complaint to all intents and purposes and with the same force and effect as if herein fully and at large set forth.

That thereafter, and in order to prevent any difficulty and misunderstanding as to the true intent and purpose of the said assignment from the said Frank L. Rabe to the New York Finance Company, dated the

first day of October, 1901, the said Frank L. Rabe on the fourth day of January, 1907, and by a certain instrument in writing, bearing date of that day, did further assure the interest and title so intended to be conveyed as aforesaid. That the said assignment was duly recorded in the Office of the Surrogates of the County of New York, in Liber 3 of Conveyances and Mortgages of Interests in Decedents' Estates, page 236, on the fourteenth day of January, 1907.

That a copy of the said assignment is hereunto annexed, marked Exhibit "D" and made a part of this Bill of Complaint to all intents and purposes and with the same force and effect as if herein fully and at large set forth.

*Eleventh.*—That on the nineteenth day of December, 1906, the said New York Finance Company did make and deliver unto John A. S. Brown, and unto Frank E. Schermerhorn as trustee for Clara Schermerhorn, under the Last Will and Testament of Thomas Cunningham, deceased, its certain promissory note bearing date also of that day, and providing for the payment of the certain sum of Ten Thousand Dollars (\$10,000) on the twenty-first day of July, 1910, together with interest thereon at the rate of six per cent. per annum; and as security for the payment of the said note did also make, execute and deliver unto the said John A. S. Brown, and unto the said Frank E. Schermerhorn as trustee for Clara Schermerhorn, under the Last Will and Testament of Thomas Cunningham, deceased, an assignment of the certain part of all the right, title and interest of the said New York Finance Company in and to the estate of Conrad Braker, Jr., deceased, to wit, a one-half part of the certain estate, right, title and interest, and any and

all moneys coming to the said New York Finance Company therefrom which had been heretofore sold and assigned by the said Frank L. Rabe to the said New York Finance Company by the aforementioned instrument, dated October 1, 1901, as by the said assignment bearing date the said nineteenth day of December, 1906, will more fully and at large appear. That the said assignment was duly recorded in the Office of the Surrogates of the County of New York, in Liber 3 of Conveyances and Mortgages of Interests in Decedents' Estates, page 204, on the twenty-first day of December, 1906.

That a copy of the said note and also a copy of the said assignment are hereunto annexed, marked respectively Exhibit "E" and Exhibit "F" and are made a part of this Bill of Complaint to all intents and purposes and with the same force and effect as if herein fully and at large set forth.

*Twelfth.*—That the said New York Finance Company defaulted in the promise particularly made and provided for in the aforementioned note, to wit, in the payment of the sum of Ten Thousand Dollars (\$10,000) therein provided for, and also in the payment of certain interest thereon for more than fifteen days after the same became due and payable.

*Thirteenth.*—That after such default in the payment of the aforementioned Note as aforesaid, your Orators, being the holders of the said Note, and under the power and authority given to them by the said Note and collateral assignment, did, on the Third day of May, 1911, cause the aforementioned collateral to the said Note to be sold at public sale, in the City of Philadelphia, State of Pennsylvania; and such sale thereof

was made at such public sale to one Charles Z. Wolff for the sum of \$2,000, the said Charles Z. Wolff being the highest bidder, and that being the highest bid therefor.

*Fourteenth.*—That thereafter, and by a certain instrument in writing, bearing date the Sixth day of May, 1911, for the aforementioned consideration of Two Thousand Dollars (\$2,000) and also pursuant to such aforementioned sale thereof, your Orators did sell and assign unto the said Charles Z. Wolff all and every their, and each of their respective right, title and interest in and to the estate of Conrad Braker, Jr., deceased, so assigned to them as hereinbefore more particularly alleged and set forth. That the said assignment was duly recorded in the Office of the Surrogates of the County of New York, in Liber 10 of Conveyances and Mortgages of Interests in Decedents' Estates, page 27, on the Sixth day of June, 1911.

That a copy of the said assignment is hereunto annexed, marked Exhibit "G" and is made a part of this Bill of Complaint to all intents and purposes and with the same force and effect as if herein fully and at large set forth.

*Fifteenth.*—That thereafter, and by a certain instrument in writing bearing date the Sixth day of May, 1911, the aforementioned Charles Z. Wolff duly sold and assigned to your Orators all and every the estate, right, title and interest of the said Charles Z. Wolff in and to the estate of Conrad Braker, Jr., deceased, so sold and assigned to him as hereinbefore more particularly alleged and set forth. That the said assignment was duly recorded in the Office of the Surrogates of the County of New York, in Liber 10 of Convey-

ances and Mortgages of Interests in Decedents' Estates, page 2, on the Sixth day of June, 1911.

That a copy of the said assignment is hereunto annexed, marked Exhibit "H" and is made a part of this Bill of Complaint to all intents and purposes and with the same force and effect as if herein fully and at large set forth.

*Sixteenth.*—That by virtue of the several assignments hereinbefore particularly specified and set forth, your Orators became vested with and entitled to receive one-half of seven-tenths of the aforementioned sum of Fifty Thousand Dollars (\$50,000) otherwise payable to the said Conrad Morris Braker under the Fifteenth paragraph of the said Last Will and Testament of Conrad Braker, Jr., deceased, on the twenty-fifth day of February, 1913, as hereinbefore alleged and set forth.

*Seventeenth.*—Your orators further show that on the Twenty-fifth day of February, 1913, your Orators made demand at the office of the respondent, Austin B. Fletcher, as Testamentary Trustee of Conrad Morris Braker, under the Last Will and Testament of Conrad Braker, Jr., deceased, upon William P. S. Melvin, his attorney, for the payment to your Orators of one-half of seven-tenths of the aforesaid legacy of Fifty Thousand Dollars (\$50,000) payable under the Fifteenth paragraph of the aforementioned Last Will and Testament of Conrad Braker, Jr., deceased. But your Orators further show that said William P. S. Melvin, attorney for the respondent, Austin B. Fletcher, as Testamentary Trustee of Conrad Morris Braker as aforesaid then and there stated that Mr. Fletcher was out of the city, and did then and there neglect and re-

fuse to pay to your Orators the said one-half of seven-tenths of the aforesaid legacy of Fifty Thousand Dollars (\$50,000) payable under the Fifteenth paragraph of the aforesaid Last Will and Testament of Conrad Braker, Jr., deceased; and your Orators further show that the said Austin B. Fletcher, as Testamentary Trustee of Conrad Morris Braker, under the Last Will and Testament of Conrad Braker, Jr., deceased, has previously stated to Charles H. Burr, of counsel for your Orators, that he would not pay the said sum, or any part thereof without an Order of Court having jurisdiction of the controversy, and that the respondent Conrad Morris Braker had in writing directed and ordered the respondent, Austin B. Fletcher, as Testamentary Trustee as aforesaid, not to make payment to your Orators under and by virtue of the aforementioned assignments, or otherwise.

*Eighteenth.*—Your Orators further show that the assignment of the said Conrad Morris Braker to the said Frank L. Rabe, attached hereto as Exhibit "B" was and is an absolute sale of seven-tenths of the aforesaid legacy of Fifty Thousand Dollars (\$50,000), payable under the Fifteenth paragraph of the aforementioned Last Will and Testament of Conrad Braker, Jr., deceased, and that by said assignment and the several mesne assignments hereinabove recited, an absolute title was and is vested in your Orators in and to the aforesaid one-half of seven-tenths of the aforesaid legacy of Fifty Thousand Dollars (\$50,000) payable under the Fifteenth paragraph of the aforementioned Last Will and Testament of Conrad Braker, Jr., deceased.

*Nineteenth.*—Your Orators further show that Conrad Morris Braker now pretends and alleges that



said assignment was in effect security for a usurious loan, and is therefore null and void. Your Orators are advised that the said Conrad Morris Braker is not a necessary party, but is a proper party defendant herein, and your Orators are further advised, allege, and aver, first, that the said assignment was in fact and in law an absolute sale; second, that the said Conrad Morris Braker is precluded by the Statute of Limitations of the State of New York from any and all attempt to set aside the said assignment because the said assignment and the transaction relating thereto was entered into and concluded on or about the Eighteenth day of April, 1901, a period of more than three years, and a period of more than ten years prior to this date, and that no action has ever been begun by the said Conrad Morris Braker to set aside, or have declared void, the aforesaid assignment. That any action by the said Conrad Morris Braker is therefore barred by the Third paragraph of Section Three Hundred and Eighty-three, and by Section Three Hundred and Eighty-eight of the Code of Civil Procedure of the State of New York.

*Twentieth.*—Your Orators are further advised that in accordance with the Constitution and Statutes of the United States they are entitled to have heard and determined by this Court their rights in and to the aforesaid legacy, free from any and all attempts and efforts which may, or shall be made by the respondents herein, or either of them, to evade the jurisdiction of this Honorable Court.

*Wherefore* your Orators need equitable relief, and pray:

(a) That your Orators may be declared entitled to the immediate possession of the said one-half of

seven-tenths of the aforesaid legacy of Fifty Thousand Dollars (\$50,000) payable under the Fifteenth paragraph of the aforementioned last Will and Testament of Conrad Braker, Jr., deceased.

(b) That your Honorable Court may order and direct that Austin B. Fletcher, as Testamentary Trustee under the aforementioned Last Will and Testament of Conrad Braker, Jr., deceased, shall be ordered and directed to pay to your Orators the said one-half seven-tenths of the legacy aforesaid, amounting to the sum of Seventeen Thousand Five Hundred Dollars (\$17,500).

(c) That your Honorable Court will order, adjudge and decree that the respondent herein, Conrad Morris Braker, has no title to, or right in, the aforementioned one-half of seven-tenths of the legacy aforesaid which he is entitled in any way to enforce against your Orators.

(d) That your Honorable Court will grant an injunction prohibiting and restraining the respondents herein, and each of them, from litigating, or attempting to litigate in any other Court the controversy and issues raised herein.

(e) That your Orators may have such further and general relief in the premises, as the nature of the case may require, and shall be agreeable to equity and good conscience.

(f) And your Orators further pray that your Honorable Court may issue a writ of subpoena to the defendants above-named, Austin B. Fletcher, as Testamentary Trustee of Conrad Morris Braker, under the Last Will and Testament of Conrad Braker, Jr., deceased, and Conrad Morris Braker, thereby command-

ing them, and each of them, at a certain time and under a certain penalty therein to be limited, personally to appear before your Honorable Court, and then and there full, true and perfect answer make, but not under oath, answer under oath being hereby expressly waived, to all and singular the premises, and further to stand to, perform and abide by such further order or direction or decree herein as to your Honorable Court may seem meet.

And your Orators will ever pray.

FREDRIC W. FROST,  
*Solicitor for Complainants John A. S.  
Brown and Frank E. Schermerhorn,  
as Trustee.*

CHARLES H. BURR,  
*Of Counsel.*

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#### EXHIBIT "A."

*In the Name of God, Amen.*

I, Conrad Braker, Jr., of the City, County and State of New York, being of sound mind and memory and knowing the uncertainty of this mortal life, do make, publish and declare this to be my Last Will and Testament, hereby revoking and annulling all wills by me heretofore made, in manner and form following, that is to say:

*First.*—I direct that all my just debts and funeral expenses be paid as soon as convenient.

*Second.*—I give, devise and bequeath to my beloved wife, Frances J. Braker, the sum of One Hundred and twenty-five thousand dollars (\$125,000) and I direct

that the same shall be and belong to her absolutely and free from any restrictions of whatsoever nature, and I further direct that the same shall be paid to her within eighteen months after my decease, with interest at the rate of five (5) per centum per annum, payable quarterly upon the amount paid until the entire sum is paid.

It is my desire and I so direct that the above bequest shall have priority over any and all other bequests made in this my Last Will and Testament, and if not paid immediately upon my decease, I direct that such reasonable security as she may desire shall be given her for its payment within the time specified.

And I further give, devise and bequeath unto my said wife, all my furniture, pictures, plate, jewelry, ornaments, horses, carriages, wagons and harness, and I direct that the above provisions made for her shall be received in lieu of dower.

*Third.*—I give devise and bequeath to my son Henry J. Braker, his heirs and assigns, all my real and personal property of whatsoever nature or description situated in Hamilton Township, McKean County, State of Pennsylvania, consisting of Warrant No. 4912 and containing about ten hundred and fifty acres (1050); also my mill property at New Brooklyn, (now called South Plainfield) New Jersey. The same to be and belong to him absolutely and at his disposal.

And I further direct that should any of the property mentioned in this section be sold or otherwise disposed of previous to my death, that within twelve months after my decease my said son, Henry J. Braker, shall in its place receive the amount obtained for the same.

*Fourth.*—I give, devise and bequeath unto my son, Conrad Morris Braker, his heirs and assigns, my property in Nyack-on-the-Hudson, State of New York, the same being situated on Broadway in the said City and consisting of about two (2) acres of land; also my property in Township No. 41 Jefferson County, State of Missouri, consisting of about 120 (one hundred and twenty acres). Also my interest in about ninety-six acres of land, known as Disbrough Farm and situated in Millstone, Hilborough Township, Somerset County, New Jersey, my interest in the same being sixty-five per cent. (65%). Also my lot consisting of about two acres in New Brooklyn, New Jersey; the same being distinct and apart from the property in said New Brooklyn given to my son Henry J. Braker, the same to be and belong to him absolutely and at his disposal.

And I further direct that should any of the property mentioned in this section be sold or otherwise disposed of previous to my death, that within twelve months after my decease my said son, Conrad Morris Braker, shall in its place receive the amount obtained for the same.

*Fifth.*—I give, devise and bequeath unto my sister, Mrs. Louise Eckart, to have and to hold to her, her heirs, executors, administrators and assigns forever the sum of Twenty Thousand (\$20,000) Dollars, the same to be paid to her within two years after my decease with interest at the rate of Five (5) per centum, to be paid quarterly upon the amount remaining unpaid, until the entire sum is paid.

*Sixth.*—I give, devise and bequeath unto my brother, George Braker to have and to hold to him, his heirs, executors, administrators and assigns forever the sum of Twenty Thousand (\$20,000) Dollars, the

same to be paid to him within two years after my decease, with interest at the rate of Five (5) per centum per annum, to be paid quarterly upon the amount remaining unpaid until the entire sum is paid.

*Seventh.*—I give, devise and bequeath unto my brother, John Henry Braker, to have and to hold to him, his heirs, executors, administrators, and assigns forever the sum of Fifteen Thousand (\$15,000) Dollars, and I direct that the same shall be paid to him within two years after my decease with interest payable quarterly upon the amount remaining unpaid at the rate of five (5) per centum per annum until the entire sum be paid.

*Eighth.*—I give, devise and bequeath to Mrs. Charles E. Morris, now of the City of Brooklyn, State of New York, the sum of One Thousand (\$1,000) Dollars, the same to be and belong to her, without restriction, and I direct that the said sum shall be paid to her within One Year from my decease.

*Ninth.*—I give, devise and bequeath to my friend, William D. Faris, now of the City of Brooklyn, State of New York, the sum of One Thousand (\$1,000) Dollars, the same to be and belong to him absolutely and without restriction, and I direct that the said sum be paid to him within One Year from my decease.

*Tenth.*—I give, devise and bequeath to William V. McKenzie, of Rahway, State of New Jersey, the sum of One Thousand (\$1,000) Dollars and direct that the same shall be paid to him within One Year from the date of my decease.

*Eleventh.*—After the above payments have been made as aforesaid and directed, I give, devise and be-



queath one-half of the rest, residue and remainder of my estate both real and personal, of whatsoever description and wheresoever situated to my son, Henry J. Braker, his heirs and assigns, the same to be and belong to him absolutely and without restriction.

*Twelfth.*—Out of the other one-half ( $\frac{1}{2}$ ) of all the rest, residue and remainder of my estate, both real and personal wheresoever situated, I give and bequeath to my son, Conrad Morris Braker, the sum of Thirty Thousand Dollars (\$30,000), and I direct that of this sum, Five Thousand Dollars (\$5,000) shall be paid to him within sixty (60) days from the date of my decease, and the remaining Twenty-five Thousand Dollars (\$25,000) of the above Thirty Thousand Dollars (\$30,000), shall be paid to him within six months from the date of my decease, and until the above amounts are paid to him, I direct that he shall receive interest on the same at the rate of five (5) per centum per annum.

*Thirteenth.*—Out of the above said other one-half of all the rest, residue and remainder of my estate, both real and personal, wheresoever situated, I give and bequeath to William D. Faris the sum of Twenty Thousand Dollars (\$20,000) and I direct that the same shall be paid to him within nineteen months of the date of my decease, and that he shall hold the same in trust for the benefit of my grandchild, Florence May Braker, until she shall attain the age of twenty-one years, which will be May thirtieth, nineteen hundred and five (A. D. 1905) at which time I direct that the said sum together with any accrued and unpaid interest or increase shall be paid to her and be and belong to her absolutely. But I further direct that, if it shall appear necessary to the said trustee for the proper mainten-

ance, support or education of my grand-child, the interest or increase derived from this bequest may be used for and applied to the above purposes, and her receipt notwithstanding her infancy, shall be an effectual discharge for the same but the principal shall remain intact until May thirtieth, nineteen hundred and five (A. D. 1905) if she shall live until that date. In the event of the death of my said grandchild, Florence May Braker, before she attains the age of twenty-one years, I direct that the principal and any accrued and unpaid interest or increase shall be paid to my son, Conrad Morris Braker, within six months of the date of her decease, if he be then living, if he shall not be living at the date of the death of my said grandchild, Florence May Braker, I direct that the said bequest shall revert to my residuary estate.

*Fourteenth.*—Out of the above said other one-half of all the rest, residue and remainder of my estate, both real and personal wherever situated, I give and bequeath to Henry J. Braker the sum of Fifty Thousand Dollars (\$50,000), and I direct that the same shall be paid to him within nineteen months from the date of my decease, and that he shall hold the same IN TRUST and securely invested for the special benefit of my son, Conrad Morris Braker, and I direct that the interest or increase on the same or on such amount as shall be unpaid as hereinafter set forth, shall be paid to him quarterly so long as he shall live, but I further direct that if he be living at the expiration of ten years from the date of my decease that the said trustee shall pay to my son, said Conrad Morris Braker, the sum of Twenty Thousand Dollars (\$20,000) of said principal together with any accrued and unpaid interest should there be any, and the same shall be and belong to him absolutely.

Should my said son be living at the expiration of fifteen years from the date of my decease, I direct that he shall be paid the further sum of Twenty Thousand Dollars (\$20,000), together with any accrued and unpaid interest on the said remaining Thirty Thousand Dollars (\$30,000) and the same shall be and belong to him absolutely.

Should my said son be living at the expiration of twenty years from the date of my decease, I direct that the remaining Ten Thousand Dollars (\$10,000) of the above mentioned sum, together with any accrued and unpaid interest on the said remaining Ten Thousand Dollars (\$10,000) shall be paid to him and the same shall be and belong to him absolutely.

*Fifteenth.*—Out of the said other one-half of all the rest, residue and remainder of my estate, both real and personal wheresoever situated, I give and bequeath to my son Henry J. Braker, the further sum of Fifty Thousand Dollars (\$50,000), and I direct that the same shall be paid to him within three years from the date of my decease, and that he shall hold the same in trust and securely invest it for the benefit of my said son, Conrad Morris Braker, paying him the interest derived from the same semi-annually from the date of my decease until he shall attain the age of fifty-five years, when I direct that the principal and any unpaid interest shall be paid to him and belong to him absolutely.

In the event of the death of my said son, Conrad Morris Braker, before he attains the age of fifty-five years, I direct that the income derived from the said Fifty Thousand Dollars (\$50,000) shall be paid semi-annually to Florence L. Braker, wife of my said son, Conrad Morris Braker, so long as she shall live and

remains unmarried; in the event of her marriage or death, I direct that the said Fifty Thousand Dollars (\$50,000) shall be given to my grandchild, Florence May Braker if she then be living, and if she be not living then the said Fifty Thousand Dollars (\$50,000) shall be paid to my son Henry J. Braker if he be living, if he be dead, I direct that it sink into my residuary estate.

*Sixteenth.*—I direct that all that remains out of the above said “other one-half of all, the rest, residue and remainder, both real and personal, wheresoever situated,” after the bequests made in sections Twelfth, Thirteenth, Fourteenth and Fifteenth shall have been provided for, shall be held in trust by my wife, Frances J. Braker, and my son, Henry J. Braker, and their duly appointed successors, for the benefit of my said son, Conrad Morris Braker, until he shall attain the age of Fifty-five years, and I direct that the interest derived from said trust shall be paid to him semi-annually, and when he shall have attained the age of fifty-five years, I direct that the whole amount less the sum of Twenty-five thousand Dollars (\$25,000) shall be paid and belong to him absolutely.

*Seventeenth.*—I direct that if my son, Conrad Morris Braker, shall attain the age of fifty-four years that the trustees of the fund referred to in the above section shall purchase with the said twenty-five thousand dollars (\$25,000) an annuity for the benefit of my said son from such a Company as they shall deem best and safest.

*Eighteenth.*—I further direct in the event of the death of my said son, Conrad Morris Braker before he shall have received the bequests made to and for him,

and specified in sections Fourth, Twelfth, Fourteenth, Fifteenth and Sixteenth, then said bequests shall pass absolutely and at once to my son, Henry J. Braker, his executors and assigns, unless otherwise specified in said sections.

*Nineteenth.*—I further direct that the trustees of any of the above bequests may at any time sell any property or securities held by them and securely reinvest the proceeds as they shall deem best.

*Twentieth.*—I direct that any one who shall dispute or contest this my Last Will and Testament, shall forfeit one-half ( $\frac{1}{2}$ ) of the legacies or benefits, they would otherwise receive under it, and the amount so forfeited shall revert to my residuary estate.

*Twenty-first.*—I nominate, constitute and appoint my son, Henry J. Braker, and my beloved wife, Frances J. Braker, the executor and executrix of this my Last Will and Testament, and I direct that the survivor shall be empowered to appoint a co-executor and in the event of either dying or failing to serve, it is my Will that another shall be appointed at once and that no one person shall serve alone as my executor or executrix, and I direct that neither my son, Henry J. Braker, or my beloved wife, Frances J. Braker, shall be required to give any bond or bonds for the execution of their duties.

*Twenty-second.*—I further direct that my son, Henry J. Braker, or my beloved wife, Frances J. Braker, in the event of the death of either shall individually be empowered to appoint a co-trustee, wherein they are named as such in this my last Will and Testament.

IN WITNESS WHEREOF: I, the said Conrad Braker, Jr., have hereunto set my hand and seal this Twentieth day of February, One thousand eight hundred and ninety.

C. BRAKER, JR.

Signed, sealed, published and declared, by the said testator as and for his last Will and Testament, in the presence of us and each of us, who in his presence, at his request, and in the presence of each other have hereunto subscribed our names as attesting witnesses this Twentieth day of February, One thousand eight hundred and ninety.

AUSTIN L. FLETCHER,

Murray Hill Hotel, Park Ave., N. Y. City.

J. ARTHUR HARRATT,

645 Madison Ave., N. Y. City.

G. OLNEY BLOTT,

114 West 49th St., N. Y. City.

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EXHIBIT "B."

WHEREAS, Conrad Braker, Jr., late of the City, County and State of New York, departed this life on or about the 21st day of July, A. D. 1890, having first made and published his Last Will and Testament in writing bearing date the twentieth day of February, A. D. 1890, duly proven and registered after his decease in the County of New York in the proper office therefor and recorded therein in Will Book No. 435, page 383, etc., wherein and whereby he did, inter alia, will as follows:



*Fifteenth.*—"Out of the said other one-half of all the rest, residue and remainder of my estate, both real and personal, wheresoever situated, I give and bequeath to my son, Henry J. Braker, the further sum of Fifty Thousand Dollars (\$50,000) and I direct that the same shall be paid to him within three years from the date of my decease, and that he shall sold the same IN TRUST and securely invest it for the benefit of my said son Conrad Morris Braker, paying him the interest derived from the same semi-annually from the date of my decease until he shall attain the age of fifty-five years, when I direct that the principal and any unpaid interest shall be paid to him and belong to him absolutely.

"In the event of the death of my said son, Conrad Morris Braker before he attains the age of Fifty-five years, I direct that the income derived from the said Fifty Thousand Dollars (\$50,000) shall be paid semi-annually to Florence L. Braker, wife of my said son, Conrad Morris Braker so long as she shall live and remains unmarried. In the event of her marriage or death, I direct that the said Fifty Thousand Dollars (\$50,000) shall be given to my grandchild, Florence May Braker if she then be living and if she be not living, then the said Fifty Thousand Dollars shall be paid to my son Henry J. Braker if he should be living, if he be dead, I direct that it sink into my residuary estate."

*Sixteenth.*—"I direct that all that remains out of the above said 'other one-half of all the rest, residue and remainder, both real and personal wheresoever situated,' after the bequests made in sections twelfth, thirteen, fourteen and fifteen shall have been provided for, shall be held IN TRUST by my wife, Frances J.

## Bill of Complaint

Braker and my son Henry J. Braker, and their duly appointed successors for the benefit of my said son Conrad Morris Braker until he shall attain the age of Fifty-five years, and I direct that the interest derived from said Trust shall be paid to him semi-annually and when he shall have attained the age of fifty-five years, I direct that the whole amount less the sum of Twenty-five thousand Dollars shall be paid and belong to him absolutely."

WHEREAS, at a Surrogate's Court held in and for the County of New York on the Sixteenth day of November, A. D. 1897, and by virtue of an order and decree rendered by said Court, Austin B. Fletcher was appointed as Testamentary Trustee for the said Conrad Morris Braker under the Last Will and Testament of Conrad Braker, Jr., deceased, to succeed the said Henry J. Braker, and to execute the unexecuted Trusts of which Henry J. Braker was Trustee, under the above recited Last Will and Testament.

WHEREAS, by a recent account rendered by the said Austin B. Fletcher of his proceedings as such Testamentary Trustee of the said Conrad Morris Braker to October 1st, 1900, and filed in the Surrogate's Court of the County of New York, it is shown that the Fifty Thousand Dollars (\$50,000) mentioned in Clause Fifteen of said Will has been duly invested as therein provided for, and that a sum aggregating One Hundred and Twenty Thousand, Seven Hundred and Thirty-one Dollars and Five Cents has been invested with the exception of a small portion thereof, for the use and benefit of the said Conrad Morris Braker as provided for in Clause Sixteen of said Will.

WHEREAS, the said Conrad Morris Braker is still living, and has attained the age of 43 years.

NOW KNOW ALL MEN BY THESE PRESENTS, that I, Conrad Morris Braker, of Stamford, Fairfield County, State of Connecticut (son of the above named testator, and devisee as hereinbefore recited) for and in consideration of the sum of One Dollar lawful money of the United States of America to me in hand well and truly paid at and before the sealing and delivery hereof by Frank L. Rabe, of the City of Philadelphia, and State of Pennsylvania, Attorney-at-Law, the receipt of all of which is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over and by these presents do grant, bargain, sell, assign, transfer and set over unto the said Frank L. Rabe, his heirs, executors, administrators and assigns seven-tenths of all my estate, right, title, and interest of, in and to the principal sum of \$50,000 to which I am entitled under and by virtue of the conditions of Clause Fifteen in the Last Will and Testament of the said Conrad Braker, Jr., deceased, as hereinbefore recited, and to no other part or portion of said estate whatever; so, however, and it is my intention, that the said Frank L. Rabe, his heirs, executors, administrators and assigns shall receive, by virtue of this assignment, the net sum of Thirty-five Thousand Dollars when and as soon hereafter as the same shall grow due and become payable, PROVIDED, HOWEVER, that should the said Trust Fund as created by the Fifteenth clause of said will, at any time hereafter be diminished by reason of any cause or thing whatsoever, whereby the said principal sum of \$50,000 should be reduced so that the assignee hereto, or his heirs, executors, administrators or assigns might not receive the said sum of Thirty-five Thousand Dollars, then, and in such case, I hereby assign, transfer and set over unto the said Frank L. Rabe, his heirs, execu-

tors, administrators or assigns so much of all my estate, right, title and interest of, in and to that portion of the principal sum to which I am entitled under the conditions of clauses Fifteen and Sixteen in said Will, as may be necessary to make up any such deficiency, so, however, and I do by these presents, for myself, my heirs, executors, and administrators, covenant, grant and agree to and with the said Frank L. Rabe, his heirs, executors, administrators and assigns, that he, the said Frank L. Rabe, his heirs, executors, administrators and assigns shall and will as hereinbefore declared and set forth, receive the net sum of Thirty-five Thousand Dollars when and as soon as the said principal sum of \$50,000 shall become due and payable under and by virtue of the provisions and conditions set forth and declared in and by the Fifteenth clause of the said Last Will and Testament of the said Conrad Braker, Jr., deceased; TO HAVE AND TO HOLD the same unto the said Frank L. Rabe, his heirs, executors, administrators and assigns from henceforth to and for his and their own proper use and benefit forever.

AND I DO HEREBY constitute and appoint the said Frank L. Rabe, my true and lawful attorney, irrevocable, with full power of substitution of other attorneys under him and give and grant to him, his heirs, executors, or administrators, full power and authority in my name or in the name of my executors or administrators, to ask, demand, sue for, recover and receive the said right, title, interest, legacies, gifts and estate hereinbefore mentioned and particularly set forth, and to compound, acquit, release and discharge the same; I hereby ratifying and confirming all and whatever he or they shall lawfully do or cause to be done in or about the premises.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 18th day of April, A. D. 1901.

CONRAD MORRIS BRAKER. (L. S.)

(Stamp)

Sealed and delivered in  
the presence of us:

CHARLES B. HELFFRICH,  
JAMES P. J. MORRIS.

RECEIVED the day of the date of the foregoing Assignment and Power of Attorney of the within named Frank L. Rabe, the sum of One Dollar being the full consideration money within mentioned.

CONRAD MORRIS BRAKER.

Witnesses at signing:

CHARLES B. HELFFRICH,  
JAMES P. J. MORRIS.

STATE OF NEW YORK,  
CITY AND COUNTY OF NEW YORK, } ss.:

On the 18th day of April, A. D. 1901, before me the subscriber, personally came CONRAD MORRIS BRAKER, to me known and known to me to be the individual mentioned in and who executed the foregoing Assignment and Power of Attorney and acknowledged to me that he executed and delivered the same for the purposes therein set forth.

JAMES P. J. MORRIS,  
*Notary Public, N. Y. Co.*

Recorded in the Office of the Register of the County of New York, in Liber 4 of Miscellaneous In-

## Bill of Complaint

struments, page 74, on the 27th day of April, A. D., 1901, at 11 o'clock 42 min. A. M.

Witness my hand and official seal.

ISAAC FROMME,  
*Register. (Seal)*

This certifies that the foregoing acknowledgment was recorded with the instrument of record in Liber 4, page 74.

ISAAC FROMME,  
*Register.*

Recorded in the Office of the Surrogates' of the County of New York in Liber 3 of Conveyances and Mortgages of Interests in Decedents' Estates, page 195, on the 21st day of Dec., A. D. 1906, at 3 o'clock 50 min. P. M.

Witness my hand and seal of the Court.

DANIEL J. DOWDNEY,  
*Clerk of the Surrogates Court. (Seal)*

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EXHIBIT "C."

WHEREAS, Conrad Morris Braker by an Assignment and Power of Attorney, bearing date the Eighteenth day of April, A. D. 1901, and recorded in the Office of the Register of the County of New York in Liber 4 of Miscellaneous instruments, page 74, etc., did grant, bargain, sell, assign, transfer and set over seven-tenths of all his estate, right, title and interest of, in and to the principal sum of Fifty Thousand (\$50,000) Dollars to which he is entitled under and by virtue of the conditions of Clause "Fifteen" in the Last Will and Testament of Conrad Braker, Jr., de-

ceased, unto Frank L. Rabe, his heirs, executors, administrators and assigns forever.

AND WHEREAS, the said Conrad Morris Braker by an Assignment and Power of Attorney bearing date the Thirteenth day of June, A. D. 1901, and recorded in the office of the Register of the County of New York, in Liber No. 4 of Miscellaneous Instruments, page 125, etc., did grant, bargain, sell, assign, transfer and set over all his estate, right, title and interest of and to the principal sum of Fifty Thousand (\$50,000) Dollars, to which he is entitled under and by virtue of the "Fourteenth" Clause under the Will of the said Conrad Braker, Jr., deceased, unto Frank L. Rabe, his heirs, executors and administrators and assigns forever.

NOW, KNOW ALL MEN BY THESE PRESENTS, that I, Frank L. Rabe, of the City of Philadelphia (Assignee as above recited) for and in consideration of the sum of Ten Thousand Dollars, lawful money of the United States of America, unto me in hand well and truly paid at and before the sealing and delivery hereof by the New York Finance Company, a corporation duly organized and existing under the laws of the State of New York, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the said New York Finance Company, its successors and assigns, all my estate, right, title and interest of, in and to the interest of Conrad Morris Braker under Clause "Fifteen" in the Will of Conrad Braker, Jr., deceased, as well as all my right, title and interest of, in and to the interest of Conrad Morris Braker under Clause "Fourteen" in the will of the said Conrad Braker, Jr., deceased, and of all and every part or parcel thereof; TO HAVE AND TO HOLD unto the said New York

Finance Company, its successors and assigns from henceforth to and for their own proper use and benefit forever.

AND I DO HEREBY constitute and appoint the said New York Finance Company my true and lawful attorney, irrevocable with full power of substitution of other attorneys under them, and give and grant to them, their successors and assigns, full power and authority in my name or in the name of my executors and administrators to ask, demand, sue for, recover and receive the said right, title, interest, legacies, gifts and estate hereinbefore mentioned and set forth, and to compound, acquit, release and discharge the same, I hereby ratifying and confirming all and whatsoever they shall lawfully do or cause to be done in or about the premises.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this first day of October, A. D. 1901.

FRANK L. RABE. (Seal)

Scaled and delivered in  
the presence of:

FRANCIS S. GINTHER,  
GRACE R. RAU.

STATE OF PENNSYLVANIA, } ss.:  
COUNTY OF PHILADELPHIA, }

On the Eleventh day of October, A. D. 1901, before me, the subscriber, a Notary Public for the Commonwealth of Pennsylvania, residing in the City of Philadelphia, personally appeared the within named Frank L. Rabe, and in due form of law acknowledged the above written assignment and Power of Attorney to



be his act and deed and desired the same might be recorded as such.

WITNESS my hand and Notarial Seal the day and year aforesaid.

FRANCIS S. GINTHER,

(Seal) *Notary Public.*

Commission expires January 19, 1903.

Recorded in the Office of the Surrogates' of the County of New York in Liber 3 of Conveyances and Mortgages of Interests in Decedents' Estates, page 200 on the 21st day of December, A. D. 1906, at 3 o'clock 56 min. P. M.

Witness my hand and seal of the Court.

DANIEL J. DOWDNEY,

*Clerk of the Surrogates' Court.* (Seal)

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Acknowledgment (Notary).

STATE OF PENNSYLVANIA, }  
COUNTY OF PHILADELPHIA, } ss.:

I, Thomas K. Finletter, Prothonotary of the County of Philadelphia, and Clerk of the Courts of Common Pleas of said County, which are Courts of Record having a common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following certificate, do by my deputy, James W. Fletcher, authorized by Act of Assembly of May 26th, 1897, certify that Francis S. Ginther, Esquire, whose name is subscribed to the certificate of the acknowledgment of the annexed instrument and thereon written, was at the time of such acknowledgment a Notary Pub-

## Bill of Complaint

lie for the Commonwealth of Pennsylvania residing in the County aforesaid, duly commissioned and qualified to administer oaths and affirmations, and to take acknowledgments and proofs of Deeds or Conveyances for lands, tenements and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said Notary Public and verily believe his signature thereto is genuine, and I further certify that the said Instrument is executed and acknowledged in conformity with the laws of the State of Pennsylvania.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said Court this 21st day of December, in the year of our Lord, One Thousand Nine Hundred and Six (1906).

THOMAS K. FINLETTER,  
*Prothonotary.*

By JAS. W. FLETCHER,  
*Dep. Prothonotary, durante absentia,*  
*secundum legem.*

(Seal)

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EXHIBIT "D."

WHEREAS, heretofore, and by a certain instrument in writing, bearing date the 18th day of April, 1901, one CONRAD MORRIS BRAKER, did assign and transfer unto one FRANK L. RABE, a seven-tenths part of the certain principal sum of \$50,000, to which the said Conrad Morris Braker was entitled under and by virtue of Clause Fifteen in the Last Will and Testament of one Conrad Braker, Jr., deceased, it being, however, fur-

ther provided by the said instrument, that should the fund created by the said Fifteenth Clause of the said Will, be by any cause or reason diminished or reduced below the said sum of \$50,000, so that the said Frank L. Rabe might not receive the net sum of \$35,000, intended to be assigned and transferred to him as aforesaid, that then and in that event, the said Conrad Morris Braker did assign and transfer unto the said Frank L. Rabe so much of the principal sum to which he, the said Conrad Morris Braker, was entitled under Clauses Fifteen and Sixteen in the aforementioned Will of Conrad Braker, Jr., deceased as might be necessary to make up any deficiency so that the said Frank L. Rabe should receive the aforementioned net sum of \$35,000; all of which by the aforementioned instrument more fully and at large appears; and,

WHEREAS, heretofore, and by a certain other instrument in writing, bearing date the 13th day of June, 1901, the aforesaid Conrad Morris Braker did also assign and transfer unto the aforesaid Frank L. Rabe, any and all his right, title and interest in and to the principal sum of \$50,000, to which the said Conrad Morris Braker was entitled under and by virtue of the "Fourteenth" Clause of the aforementioned Last Will and Testament of Conrad Braker, Jr., deceased, subject only to the payment of the certain aggregate sum of \$13,000 therefrom, as by the aforementioned instrument will also more fully and at large appear; and,

WHEREAS, heretofore, and by a certain instrument in writing, bearing date the First day of October, 1901, the aforementioned Frank L. Rabe, did assign and transfer unto New York Finance Company, all and every his Estate, right, title and interest in and to the Estate of the aforementioned Conrad Braker, Jr., deceased, so assigned and transferred to him by Conrad

Morris Braker as hereinbefore recited and set forth; and,

WHEREAS, by inadvertence and mistake, the last mentioned assignment from Frank L. Rabe to New York Finance Company did not particularly refer to the right, title and interest acquired by the said Frank L. Rabe in and to the Estate of the aforesaid Conrad Braker, Jr., deceased, under the Sixteenth clause of his Last Will and Testament, and duly assigned to the said Frank L. Rabe by the aforesaid Conrad Morris Braker on April 18th, 1901, as hereinbefore particularly recited and set forth, although it was the intention of the parties thereto, that such interest was included in and was assigned by the said Frank L. Rabe to the said New York Finance Company, by the said instruments; and,

WHEREAS, to prevent difficulties and misunderstandings hereafter, it is expedient to correct such error and omission, if any there be:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that I, the aforementioned Frank L. Rabe, for and in consideration of the premises, and also of the sum of One Dollar to me in hand duly paid, at and before the sealing and delivery of these presents, by the New York Finance Company, a corporation organized and existing under and by virtue of the Laws of the State of New York, and the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents do hereby grant, bargain, sell, assign, transfer and set over unto the said New York Finance Company, its successors and assigns FOREVER all and every my estate, right, title and interest of any kind, form, and description whatsoever, in and to the Estate of Conrad Braker, Jr., deceased, and particularly in and to

all moneys coming to me under the 14th, 15th and 16th Clauses of the Last Will and Testament of the said Conrad Braker, Jr., deceased, so assigned and transferred to me by Conrad Morris Braker, by the two certain instruments of assignment, dated respectively the 18th day of April, 1901, and June 12th, 1901, and hereinbefore more particularly referred to and set forth; TO HAVE AND TO HOLD the same unto the said New York Finance Company, its successors and assigns to and for its and their own proper use and benefit forever; this instrument being given to correct any mistakes, omissions, or ambiguity, if any there be, in the aforementioned assignment between the said parties, dated October 1st, 1901.

AND I DO HEREBY constitute and appoint the said New York Finance Company my true and lawful Attorney irrevocable, with full power of substitution of other Attorneys under them, and give and grant to them, their Successors and Assigns, full power and authority in my name or in the name of my Executors and Administrators to ask, demand, sue for, recover and receive the said right, title, interest, legacies, gifts and estate hereinbefore mentioned and set forth, and to compound, acquit, release and discharge the same, I hereby ratifying and confirming all and whatsoever they shall lawfully do or cause to be done in or about the premises.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 4th day of January, A. D. 1907.

FRANK L. RABE (L. S.)

Sealed and delivered in  
the presence of:

GEORGE KOPPENHOFER, JR.,  
M. McLAUGHLIN.

## Bill of Complaint

On the 4th day of January, A. D. 1907, before me, the subscriber, a Notary Public for the Commonwealth of Pennsylvania, residing in the City of Philadelphia, personally appeared the within named Frank L. Rabe and in due form of law acknowledged the above written Assignment and Power of Attorney to be his Act and Deed and desired the same might be recorded as such.

WITNESS my hand and Notarial Seal, this day and year aforesaid.

GRACE C. FISHER,

(Seal)

*Notary Public.*

Commission expires Jan. 18, 1907.

Recorded in the Office of the Surrogates' of the County of New York, in Liber 3 of Conveyances and Mortgages of Interests in Decedents' Estates, page 236, on the 14th day of January, A. D. 1907, at Two o'clock 10 min. P. M.

Witness my hand and seal of the Court.

DANIEL J. DOWDNEY,

(Seal)

*Clerk of the Surrogates' Court.*

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Acknowledgment (Notary).

STATE OF PENNSYLVANIA, } ss.:  
COUNTY OF PHILADELPHIA, }

I, Thomas K. Finletter, Prothonotary of the County of Philadelphia, and Clerk of the Courts of Common Pleas of said County, which are Courts of Record having a common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following certificate, do by my deputy, James W. Fletcher, authorized by Act of Assembly of May 26th,

1897, certify that Grace C. Fisher, Esquire, whose name is subscribed to the certificate of the acknowledgment of the annexed instrument and thereon written, was at the time of such acknowledgment a Notary Public for the Commonwealth of Pennsylvania residing in the County aforesaid, duly commissioned and qualified to administer oaths and affirmations, and to take acknowledgments and proofs of Deeds or Conveyances for lands, tenements and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said Notary Public and verily believe his signature thereto is genuine, and I further certify that the said Instrument is executed and acknowledged in conformity with the laws of the State of Pennsylvania.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said Court this 8th day of January, in the year of our Lord, One Thousand Nine Hundred and Seven (1907).

THOMAS K. FINLETTER,  
*Prothonotary.*

By JAS. W. FLETCHER,  
*Dep. Prothonotary, durante absentia,*  
*secundum legem.*

(Seal)

## Bill of Complaint

## EXHIBIT "E."

New York City, N. Y., Dec. 19, 1906.

On July 21st, 1910, for value received, the NEW YORK FINANCE COMPANY, promises to pay to the order of JOHN A. S. BROWN and of FRANK E. SCHERMERHORN as Trustee for Clara Schermerhorn under the Last Will and Testament of Thomas Cunningham, deceased, at No. 11 Broadway, Borough of Manhattan, City of New York, the sum of Ten Thousand (\$10,000) Dollars, together with interest thereon at the rate of six per cent. per annum, payable semi-annually, having pledged herewith as collateral security (1) a certain part of all its right, title and interest in and to the estate of Conrad Braker, Jr., deceased, as by the certain assignment bearing even date herewith will more fully and at large appear, and (2) two certain Policies of Insurance of the Equitable Life Assurance Society of the United States, upon the life of one Conrad Morris Braker, also duly assigned of even date herewith.

And upon the non-performance of this promise, or upon default in the payment of any interest on the said loan for the space of fifteen days after the same shall become due and payable, it hereby authorizes and empowers the holder of this note to sell any and all of the certain part of all the right, title and interest of the said New York Finance Company in and to the aforementioned estate of Conrad Braker, Jr., deceased, as is particularly described in the aforementioned assignment, at public or private sale at the option of the holders hereof, and with or without notice; and to apply the proceeds, or so much thereof, as may be necessary to the payment of this note, and of all necessary legal, or other costs and expenses, including counsel fees and other charges connected with the collection hereof, and the sale and delivery of the said interest,



holding the said New York Finance Company responsible for any deficiency, which it hereby undertakes and agrees to pay, and accounting to the said New York Finance Company for the surplus, if any; with the privilege to the holder of this note to become the purchaser at such sale, if any be had.

## NEW YORK FINANCE COMPANY.

By ARTHUR W. DEPUE,  
*President.*

(Seal)

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EXHIBIT "F."

WHEREAS, the New York Finance Company has this day made and given to John A. S. Brown and to Frank E. Schermerhorn as Trustee for Clara Schermerhorn, under the Last Will and Testament of Thomas Cunningham, deceased, its certain promissory note for the payment of Ten Thousand (\$10,000) Dollars on the 21st day of July, 1910; and

WHEREAS, heretofore and by two certain instruments in writing bearing date of April 18th, 1901, and June 13th, 1901, respectively, one Conrad Morris Braker did grant, bargain, sell, assign, transfer and set over to one Frank L. Rabe certain of his estate, right, title and interest in and to the certain legacies coming to him under and by virtue of the "Fourteenth," "Fifteenth," and "Sixteenth" paragraphs respectively of the Last Will and Testament of Conrad Braker, Jr., deceased, as by the said assignments will more particularly and at large appear; and

WHEREAS, the said Frank L. Rabe by a certain instrument in writing bearing date of October 1st, 1901, did assign, transfer and set over to the aforementioned New York Finance Company any and all his aforementioned estate, right, title and interest in and to the es-

tate of the said Conrad Braker, Jr., deceased, as hereinbefore more particularly recited, and as by the last mentioned assignment from the said Frank L. Rabe to the said New York Finance Company will also more fully and at large appear;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the New York Finance Company, a corporation organized and existing under and by virtue of the laws of the State of New York, for and in consideration of the sum of One Dollar to it in hand well and truly paid at and before the sealing and delivery hereof, by John A. S. Brown and by Frank E. Schermerhorn, as Trustee for Clara Schermerhorn, under the Last Will and Testament of Thomas Cunningham, deceased, and the receipt whereof is hereby acknowledged, and for the purpose of securing to the said John A. S. Brown and the said Frank E. Schermerhorn as Trustee aforesaid, payment of the aforesaid note, together with the interest thereon, has bargained, granted, sold, assigned, transferred and set over, and by these presents does hereby grant, bargain, sell, assign, transfer, and set over unto the said John A. S. Brown and the said Frank E. Schermerhorn as Trustee for Clara Schermerhorn, under the Last Will of Thomas Cunningham, deceased, their and each of their executors, administrators, successors and assigns, any and all moneys coming to it under and by virtue of the aforementioned assignment bearing date of June 13th, 1901, and also a one-half part of any and all moneys coming to it under and by virtue of the aforementioned assignment bearing date of April 18th, 1901, and duly assigned to the said New York Finance Company as hereinbefore particularly recited and set forth, and also all and every its estate, right, title and interest in and to such moneys, or any part thereof; TO HAVE AND TO HOLD the same unto the said John A. S. Brown and

the said Frank E. Schermerhorn as Trustee aforesaid, their and each of their executors, administrators, successors and assigns to and for their and each of their own proper use and benefit forever; provided, however, that if the said New York Finance Company shall well and truly pay or cause to be paid unto the said John A. S. Brown and the said Frank E. Schermerhorn as Trustee aforesaid, its certain note hereinbefore referred to, together with the interest thereon, or any note or notes which may be given in renewal thereof, then this assignment shall be null and void and the estate hereby created shall cease and determine.

And the said New York Finance Company does hereby appoint the said John A. S. Brown and Frank E. Schermerhorn its true and lawful attorneys, irrevocable, with full power of substitution of other attorneys under them and each of them, and give and grant to them and each of them, their and each of their executors, administrators, successors and assigns, full power and authority in its name, or in the name of its successors or assigns, to ask, demand, sue for, recover and receive the said right, title, interest, legacies and estate hereinbefore mentioned and particularly set forth, and to compound, acquit, release and discharge the same; it hereby ratifying and confirming all and whatever they or either of them shall lawfully do, or cause to be done in or about the premises.

IN WITNESS WHEREOF, the said New York Finance Company has hereunto signed its name, and caused the same to be signed by its President, and its corporate seal to be hereunto affixed, this 19th day of December, 1906.

NEW YORK FINANCE COMPANY.

ARTHUR W. DEPUE,

*President.*

(Seal)

STATE OF NEW YORK,  
COUNTY OF NEW YORK, } ss.:

On the 19th day of December, in the year One Thousand Nine Hundred and Six, before me personally came ARTHUR W. DEPUE, to me known, who being by me duly sworn, did depose and say: that he resides in the City of New York; that he is the President of the NEW YORK FINANCE COMPANY, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was said corporate seal; that it was so affixed by order of the Board of Directors of the said corporation, and that he signed his name thereto by like order.

C. STANLEY MITCHELL,  
*Notary Public, N. Y. County, No. 193.*

Recorded in the Office of the Surrogates of the County of New York, in Liber 3 of Conveyances and Mortgages of Interests in Decedents' Estates, page 204, on the 21st day of December, A. D. 1906, at 3 o'clock 57 min. P. M.

Witness my hand and seal of the Court.

DANIEL J. DOWDNEY,  
(Seal) *Clerk of the Surrogates' Court.*

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EXHIBIT "G."

WHEREAS, heretofore, and on the 19th day of December, 1906, the New York Finance Company, a corporation organized and existing under and by virtue of the laws of the State of New York, did make and deliver unto John A. S. Brown, and to Frank E. Scher-

merhorn, as trustee for Clara Schermerhorn, under the last Will and Testament of Thomas Cunningham, deceased, its certain promissory note, bearing date the said 19th day of December, 1906, and providing for the payment of the said sum of Ten Thousand Dollars (\$10,000) on the 21st day of July, 1910, together with interest thereon at the rate of 6% per annum, payable semi-annually, at No. 11 Broadway, Borough of Manhattan, City of New York, and as security for the payment of the said note did also make, execute and deliver unto the said John A. S. Brown, and unto Frank E. Schermerhorn, as trustee for Clara Schermerhorn, under the last Will and Testament of Thomas Cunningham, deceased, an assignment of the certain part of all the right, title, and interest of the New York Finance Company, in and to the estate of Conrad Braker, Jr., deceased, to wit: a one-half part of the certain estate, right, title, and interest, and any and all moneys coming to the said New York Finance Company therefrom, assigned and transferred by Conrad Morris Braker to Frank L. Rabe by a certain instrument in writing, bearing date of April 18, 1901; and by the said Frank L. Rabe duly assigned and transferred to the said New York Finance Company, by a certain instrument in writing, bearing date of October 1st, 1901; and also the certain part of all the right, title and interest of the New York Finance Company in and to the estate of Conrad Braker, Jr., deceased, to wit: the certain estate, right, title, and interest, and any and all moneys coming to the said New York Finance Company therefrom, assigned and transferred by Conrad Morris Braker to Frank L. Rabe by a certain instrument in writing, bearing date of June 13th, 1901; and by the said Frank L. Rabe duly assigned and transferred to the said New York Finance Company by a certain instrument in writ-

ing, bearing the date of October 1st, 1901, as by the certain assignment bearing date the said 19th day of December, 1906, will more fully and at large appear; and

WHEREAS, in and by the certain promissory note it is provided, inter alia, as follows, to wit:

“And upon the non-performance of this promise, or upon default in the payment of any interest on the said loan for the space of fifteen days after the same shall become due and payable, it hereby authorizes and empowers the holder of this note to sell any and all of the certain part of all the right, title and interest of the said New York Finance Company, in and to the aforementioned estate of Conrad Braker, Jr., deceased, as is particularly described in the aforementioned assignment, at public or private sale at the option of the holders hereof; and with or without notice; and to apply the proceeds, or so much thereof, as may be necessary to the payment of this note, and of all necessary legal, or other costs and expenses, including counsel fees and other charges connected with the collection hereof, and the sale and delivery of the said interest, holding the said New York Finance Company responsible for any deficiency, which it hereby undertakes and agrees to pay, and accounting to the said New York Finance Company for the surplus, if any: with the privilege to the holder of this note to become the purchaser at such sale, if any be had.”

AND WHEREAS, the said New York Finance Company did default in said promise, to wit, in the payment of the said sum of \$10,000 and in the payment of certain interest due thereon for more than fifteen days after the same became due and payable, and after requests and demands for the payment thereof, failed, neglected and refused to make payment thereof; and

WHEREAS, the said John A. S. Brown and Frank E. Schermerhorn, as trustee for Clara Schermerhorn, under the last Will and Testament of Thomas Cunningham, deceased, being the holders of the said note, did on the 3rd day of May, 1911, cause the aforementioned collateral to the said note to be sold at Public Sale by Messrs. Barnes & Lofland, auctioneers, in the City of Philadelphia, State of Pennsylvania, freed and discharged from any equity of redemption, to Charles Z. Wolff for the sum of Two Thousand Dollars (\$2,000.00), the said Charles Z. Wolff being the highest bidder, and that being the highest bid therefor.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that we, the aforementioned John A. S. Brown and Frank E. Schermerhorn, as trustee for Clara Schermerhorn, under the last Will and Testament of Thomas Cunningham, for and in consideration of the aforementioned sum of Two Thousand Dollars (\$2,000.00), to us in hand paid, and the receipt whereof is hereby acknowledged, and also pursuant to such aforementioned sale, have granted, bargained, sold, assigned, transferred and set over, and by these presents do hereby grant, bargain, sell, assign, transfer and set over unto the aforementioned Charles Z. Wolff, his executors, administrators and assigns, the certain part of all the right, title and interest of the New York Finance Company, in and to the estate of Conrad Braker, Jr., deceased, to wit: a one-half of the certain estate, right, title and interest, and any and all moneys coming to the said New York Finance Company therefrom, assigned and transferred by Conrad Morris Braker to Frank L. Rabe by a certain instrument in writing, bearing date of April 18th, 1901, and by the said Frank L. Rabe duly assigned and transferred to the said New York Finance Company by a certain in-

strument in writing, bearing the date of October 1st, 1901: and also the certain part of all the right, title and interest of the New York Finance Company in and to the estate of Conrad Braker, Jr., deceased, to wit: the certain estate, right, title and interest, and any and all moneys coming to the said New York Finance Company therefrom, assigned and transferred by Conrad Morris Braker to Frank L. Rabe by a certain instrument in writing, bearing date of June 13th, 1901, and by the said Frank L. Rabe duly assigned and transferred to the said New York Finance Company by a certain instrument in writing, bearing the date of October 1st, 1901, as by the certain assignment bearing date the said 19th day of December, 1906, will more fully and at large appear, freed and discharged from any equity of redemption.

TO HAVE AND TO HOLD THE SAME, unto the said Charles Z. Wolff, his executors, administrators and assigns forever.

And the said John A. S. Brown and Frank E. Schermerhorn, as trustee for Clara Schermerhorn, under the last Will and Testament of Thomas Cunningham, deceased, hereby constitute and appoint the said Charles Z. Wolff their true and lawful attorney, irrevocable, with full power of substitution of other attorneys under him, and give and grant to him, his successors and assigns, full power and authority in their name, to ask, demand, sue for, recover and receive the aforementioned interest in the estate of Conrad Braker, Jr., deceased, and any and all moneys payable thereunder as hereinbefore particularly mentioned and set forth, and to compound, acquit, release and discharge the same, they hereby ratifying and confirming all and whatsoever he or they shall lawfully do or cause to be done in or about the premises.



Bill of Complaint

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IN WITNESS WHEREOF, the said John A. S. Brown, and Frank E. Schermerhorn, as trustee for Clara Schermerhorn, under the last Will and Testament of Thomas Cunningham, deceased, have hereunto set their respective hands and seals this sixth day of May, A. D. 1911.

JOHN A. S. BROWN, (Seal)

FRANK E. SCHERMERHORN,

*As trustee for Clara Schermerhorn, under the Last Will and Testament of Thomas Cunningham, deceased.*

(Seal)

Signed, sealed and delivered  
in the presence of:

GEORGE KOPPENHOEFER, JR.,

RAYMOND C. KARGE.

STATE OF PENNSYLVANIA,  
CITY AND COUNTY OF PHILADELPHIA, } ss.:

On this Sixth day of May, A. D., 1911, before me, the subscriber, personally came and appeared JOHN A. S. BROWN, to me known, and known to me to be one of the persons described in and who executed the foregoing instrument, and in due form of law acknowledged to me that he executed the same as and for his voluntary act and deed.

WITNESS my hand and Notarial Seal, the day and year aforesaid.

GEORGE KOPPENHOEFER, JR.,

(Seal)

*Notary Public.*

My commission expires March 10, 1913.

## Bill of Complaint

STATE OF PENNSYLVANIA,  
CITY AND COUNTY OF PHILADELPHIA, } ss.:

On this Sixth day of May, A. D., 1911, before me, the subscriber, personally came and appeared FRANK E. SCHERMERHORN, to me known, and known to me to be one of the persons described in and who executed the foregoing instrument, and in due form of law acknowledged to me that he executed the same as Trustee for Clara Schermerhorn, under the last Will and Testament of Thomas Cunningham, deceased.

WITNESS my hand and Notarial Seal, the day and year aforesaid.

GEORGE KOPPENHOEFER, JR.,  
(Seal) *Notary Public.*

My commission expires March 10, 1913.

STATE OF PENNSYLVANIA, } Acknowledgment (Notary)  
COUNTY OF PHILADELPHIA, } ss.:

I, Henry F. Walton, Prothonotary of the County of Philadelphia, and Clerk of the Courts of Common Pleas of said County, which are Courts of Record having a common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following certificate, do certify that George Koppenhoefer, Jr., Esquire, whose name is subscribed to the certificate of the acknowledgment of the annexed instrument and thereon written, was at the time of such acknowledgment a Notary Public for the Commonwealth of Pennsylvania residing in the County aforesaid, duly commissioned and qualified to administer oaths and affirmations, and to take acknowledgments and proofs

of deeds or conveyances for lands, tenements and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said Notary Public and verily believe his signature thereto is genuine, and I further certify that the said instrument is executed and acknowledged in conformity with the laws of the State of Pennsylvania.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said Court this 6th day of May, in the year of our Lord, one thousand nine hundred and eleven (1911).

HENRY F. WALTON,

(Seal)

*Prothonotary.*

Recorded in the Office of the Surrogates' of the County of New York in Liber 10 of Conveyances and Mortgages of Interests in Decedents' Estates, page 27 on the 6th day of June, A. D. 1911, at 12 o'clock 52 min. P. M.

Witness my hand and seal of the Court.

DANIEL J. DOWDNEY,

(Seal)

*Clerk of the Surrogates' Court.*

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EXHIBIT "H."

WHEREAS, heretofore, and on the 19th day of December, 1906, the New York Finance Company, a corporation organized and existing under and by virtue of the laws of the State of New York, did make and deliver unto John A. S. Brown, and to Frank E. Schermerhorn, as Trustee for Clara Schermerhorn, under

the last Will and Testament of Thomas Cunningham, deceased, its certain promissory note, bearing date the said 19th day of December, 1906, and providing for the payment of the said sum of Ten Thousand Dollars (\$10,000) on the 21st day of July, 1910, together with interest thereon at the rate of 6% per annum, payable semi-annually, at No. 11 Broadway, Borough of Manhattan, City of New York; and as security for the payment of the said Note did also make, execute and deliver unto the said John A. S. Brown, and unto Frank E. Schermerhorn, as trustee for Clara Schermerhorn, under the last Will and Testament of Thomas Cunningham, deceased, an assignment of the certain part of all the right, title and interest of the New York Finance Company, in and to the estate of Conrad Braker, Jr., deceased, to wit, a one-half part of the certain estate, right, title and interest, and any and all moneys coming to the said New York Finance Company therefrom, assigned and transferred by Conrad Morris Braker to Frank L. Rabe by a certain instrument in writing, bearing date of April 18th, 1901; and by the said Frank L. Rabe duly assigned and transferred to the said New York Finance Company by a certain instrument in writing, bearing the date of October 1st, 1901; and also the certain part of all the right, title and interest of the New York Finance Company in and to the estate of Conrad Braker, Jr., deceased, to wit: the certain estate, right, title and interest, and any and all moneys coming to the said New York Finance Company therefrom, assigned and transferred by Conrad Morris Braker to Frank L. Rabe by a certain instrument in writing, bearing date of June 13th, 1901; and by the said Frank L. Rabe duly assigned and transferred to the said New York Finance Company by a certain instrument in writing, bearing

the date of October 1st, 1901, as by the certain assignment bearing date the said 19th day of December, 1906, will more fully and at large appear; and

WHEREAS, in and by the certain promissory note it is provided, inter alia, as follows, to wit:

“And upon the non-performance of this promise, or upon default in the payment of any interest on the said loan for the space of fifteen days after the same shall become due and payable, it hereby authorizes and empowers the holder of this note to sell any and all of the certain part of all the right, title and interest of the said New York Finance Company, in and to the aforementioned estate of Conrad Braker, Jr., deceased, as is particularly described in the aforementioned assignment, at public or private sale at the option of the holders hereof, and with or without notice; and to apply the proceeds, or so much thereof, as may be necessary to the payment of this note, and of all necessary legal, or other costs and expenses, including counsel fees and other charges connected with the collection hereof, and the sale and delivery of the said interest, holding the said New York Finance Company responsible for any deficiency, which it hereby undertakes and agrees to pay, and accounting to the said New York Finance Company for the surplus, if any; with the privilege to the holder of this note to become the purchaser at such sale, if any be had.”

AND WHEREAS, the said New York Finance Company did default in the said promise, to wit, in the payment of the said sum of \$10,000 and in the payment of certain interest due thereon for more than Fifteen days after the same became due and payable, and after requests and demands for the payment thereof, failed, neglected and refused to make payment thereof; and

## Bill of Complaint

WHEREAS, the said John A. S. Brown and Frank E. Schermerhorn, as trustee for Clara Schermerhorn, under the last Will and Testament of Thomas Cunningham, deceased, being the holders of the said Note, did on the 3rd day of May, 1911, cause the aforementioned collateral to the said note to be sold at Public Sale by Messrs. Barnes & Lofland, auctioneers, in the City of Philadelphia, State of Pennsylvania, freed and discharged from any equity of redemption, to Charles Z. Wolff for the sum of Two Thousand Dollars (\$2,000.00), the said Charles Z. Wolff being the highest bidder, and that being the highest bid therefor; and

WHEREAS, the aforementioned John A. S. Brown, and Frank E. Schermerhorn, as trustee for Clara Schermerhorn, under the last Will and Testament of Thomas Cunningham, deceased, pursuant to such abovementioned sale, and in consideration of the aforementioned sum of Two Thousand Dollars (\$2,000.00), and on the Sixth day of May, A. D. 1911, did grant, bargain, sell, assign, transfer and set over unto the said Charles Z. Wolff, his executors, administrators and assigns, all and every the estate, right, title and interest of the said New York Finance Company, in and to the aforementioned estate of Conrad Braker, Jr., deceased, which estate, right, title and interest is hereinbefore more particularly described and set forth, freed and discharged from any equity of redemption.

NOW, THEREFORE, know all men by these presents, that I, the aforementioned Charles Z. Wolff, of the City of Philadelphia, State of Pennsylvania, for and in consideration of the sum of Two Thousand Dollars (\$2,000.00), to me in hand paid, and the receipt whereof is hereby acknowledged, have granted, bar-

gained, sold, assigned, transferred and set over, and by these presents do hereby grant, bargain, sell, assign, transfer and set over unto John A. S. Brown, and Frank E. Schermerhorn, as trustee for Clara Schermerhorn, under the last Will and Testament of Thomas Cunningham, deceased, their and each of their respective executors, administrators, successors and assigns, all and every the estate, right, title and interest which I, the said Charles Z. Wolff now have, or hereafter may become entitled to receive, in, to or from the aforementioned estate of Conrad Braker, Jr., deceased, as hereinbefore more particularly mentioned and described, and also any and all moneys coming to me therefrom.

TO HAVE AND TO HOLD THE SAME, unto the said John A. S. Brown and Frank E. Schermerhorn, as trustee for Clara Schermerhorn, under the last Will and Testament of Thomas Cunningham, deceased, their, and each of their respective executors, administrators, successors and assigns forever.

And the said Charles Z. Wolff hereby constitutes and appoints the said John A. S. Brown and Frank E. Schermerhorn, as trustee for Clara Schermerhorn, under the Last Will and Testament of Thomas Cunningham, deceased, his true and lawful attorneys, irrevocable, with full power of substitution of other attorneys under them and each of them, and give and grant to them, and each of them, their and each of their respective executors, administrators, successors, and assigns, full power and authority in his name, to ask, demand, sue for, recover and receive the aforementioned interest in the estate of Conrad Braker, Jr., deceased, and any and all moneys payable thereunder, as hereinbefore particularly mentioned and set forth, and to compound, acquit, release and discharge the

same, I hereby ratifying and confirming all and whatsoever they or either of them shall lawfully do, or cause to be done in or about the premises.

IN WITNESS WHEREOF, I, the aforementioned Charles Z. Wolff, have hereunto set my hand and seal, this Sixth day of May, A. D. 1911.

CHARLES Z. WOLFF. (Seal)

Signed, sealed and delivered  
in the presence of:

GEORGE KOPPENHOEFER, JR.,  
RAYMOND C. KARGE.

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STATE OF PENNSYLVANIA, } ss.:  
CITY AND COUNTY OF PHILADELPHIA, }

On this Sixth day of May, A. D., 1911, before me, the subscriber, personally came and appeared CHARLES Z. WOLFF, to me known, and known to me to be the person described in and who executed the foregoing instrument, and in due form of law acknowledged to me that he executed the same as and for his voluntary act and deed.

WITNESS my hand and Notarial Seal, the day and year aforesaid.

(Seal) GEORGE KOPPENHOEFER, JR.,  
Notary Public.

My commission expires March 10, 1913.



## Acknowledgment (Notary)

STATE OF PENNSYLVANIA, }  
COUNTY OF PHILADELPHIA, } ss.:

I, Henry F. Walton, Prothonotary of the County of Philadelphia, and Clerk of the Courts of Common Pleas of said County, which are Courts of Record having a common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following certificate, do certify that George Koppenhoefer, Jr., Esquire, whose name is subscribed to the certificate of the acknowledgment of the annexed instrument and thereon written, was at the time of such acknowledgment a Notary Public for the Commonwealth of Pennsylvania residing in the County aforesaid, duly commissioned and qualified to administer oaths and affirmations, and to take acknowledgments and proofs of deeds or conveyances for lands, tenements and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said Notary Public and verily believe his signature thereto is genuine, and I further certify that the said instrument is executed and acknowledged in conformity with the laws of the State of Pennsylvania.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said Court this 6th day of May, in the year of our Lord, one thousand nine hundred and eleven (1911).

HENRY F. WALTON,

(Seal)

*Prothonotary.*

56 Answer of Defendant Fletcher as Trustee

Recorded in the Office of the Surrogates' of the County of New York in Liber 10 of Conveyances and Mortgages of Interests in Decedents' Estates, page 2 on the 6th day of June, A. D. 1911, at 12 o'clock 52 min. P. M.

Witness my hand and seal of the Court.

(Seal) DANIEL J. DOWDNEY,  
*Clerk of the Surrogates' Court.*

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**ANSWER OF DEFENDANT FLETCHER AS  
TRUSTEE.**

(Filed May 21, 1913.)

The above-named defendant, Austin B. Fletcher, as testamentary trustee of Conrad Morris Braker, under the last will and testament of Conrad Braker, Jr., deceased, separately and for himself answering the Bill of Complaint herein:

I. Admits the allegations contained in the paragraphs of said bill numbered "third," "fourth," "fifth," "sixth" and "seventh."

II. Admits as alleged in the "eighth" paragraph of said bill that Conrad Morris Braker attained the age of fifty-five years on the 25th day of February, 1913, and that he, or his assigns, became entitled to receive and have paid over to him or them the fund under the trust provided for him by the fifteenth paragraph of the will of Conrad Braker, Jr., but this admission is qualified by this that such payment is subject to, a prior accounting on the part of this defendant respecting said trust.

III. Defendant further answering is without knowledge that the plaintiffs, John A. S. Brown or Frank E. Schermerhorn, are citizens of the State of Pennsylvania, and further, is without knowledge that the plaintiff, Frank E. Schermerhorn, is trustee for Clara Schermerhorn, under the last will and testament of Thomas Cunningham, deceased, as alleged in paragraph "first" of said bill.

IV. Defendant denies that the jurisdiction of the court depends upon the diverse citizenship of the parties, as alleged in paragraph "second" of the bill.

V. Defendant further answering is without knowledge that Conrad Morris Braker, as alleged in the "ninth" paragraph of the bill, sold and assigned to Frank L. Rabe, seven-tenths of his right, title and interest in the sum of \$50,000, under the fifteenth clause of said will of Conrad Braker, Jr. And is without knowledge that said alleged assignment was recorded, as alleged in the office of the Register of the County of New York, and also recorded in the Surrogates' office of the County of New York. And is further without knowledge that the alleged copy of said assignment (Exhibit B) is a true copy of said assignment.

VI. Defendant further answering is without knowledge that the New York Finance Company is a corporation, organized and existing under the laws of the State of New York, and is without knowledge that Frank L. Rabe sold and assigned to said Company, as alleged in the "tenth" paragraph of the bill, all the right, title and interest of said Conrad Morris Braker under the fifteenth clause of the said will of Conrad Braker, Jr.—and is without knowledge that said last mentioned assignment was recorded, as alleged, in the

56 Answer of Defendant Fletcher as Trustee

Recorded in the Office of the Surrogates' of the County of New York in Liber 10 of Conveyances and Mortgages of Interests in Decedents' Estates, page 2 on the 6th day of June, A. D. 1911, at 12 o'clock 52 min. P. M.

Witness my hand and seal of the Court.

(Seal) DANIEL J. DOWDNEY,  
*Clerk of the Surrogates' Court.*

---

**ANSWER OF DEFENDANT FLETCHER AS  
TRUSTEE.**

(Filed May 21, 1913.)

The above-named defendant, Austin B. Fletcher, as testamentary trustee of Conrad Morris Braker, under the last will and testament of Conrad Braker, Jr., deceased, separately and for himself answering the Bill of Complaint herein:

I. Admits the allegations contained in the paragraphs of said bill numbered "third," "fourth," "fifth," "sixth" and "seventh."

II. Admits as alleged in the "eighth" paragraph of said bill that Conrad Morris Braker attained the age of fifty-five years on the 25th day of February, 1913, and that he, or his assigns, became entitled to receive and have paid over to him or them the fund under the trust provided for him by the fifteenth paragraph of the will of Conrad Braker, Jr., but this admission is qualified by this that such payment is subject to, a prior accounting on the part of this defendant respecting said trust.

III. Defendant further answering is without knowledge that the plaintiffs, John A. S. Brown or Frank E. Schermerhorn, are citizens of the State of Pennsylvania, and further, is without knowledge that the plaintiff, Frank E. Schermerhorn, is trustee for Clara Schermerhorn, under the last will and testament of Thomas Cunningham, deceased, as alleged in paragraph "first" of said bill.

IV. Defendant denies that the jurisdiction of the court depends upon the diverse citizenship of the parties, as alleged in paragraph "second" of the bill.

V. Defendant further answering is without knowledge that Conrad Morris Braker, as alleged in the "ninth" paragraph of the bill, sold and assigned to Frank L. Rabe, seven-tenths of his right, title and interest in the sum of \$50,000, under the fifteenth clause of said will of Conrad Braker, Jr. And is without knowledge that said alleged assignment was recorded, as alleged in the office of the Register of the County of New York, and also recorded in the Surrogates' office of the County of New York. And is further without knowledge that the alleged copy of said assignment (Exhibit B) is a true copy of said assignment.

VI. Defendant further answering is without knowledge that the New York Finance Company is a corporation, organized and existing under the laws of the State of New York, and is without knowledge that Frank L. Rabe sold and assigned to said Company, as alleged in the "tenth" paragraph of the bill, all the right, title and interest of said Conrad Morris Braker under the fifteenth clause of the said will of Conrad Braker, Jr.—and is without knowledge that said last mentioned assignment was recorded, as alleged, in the

58 Answer of Defendant Fletcher as Trustee

office of the Surrogate of the County of New York, or that the alleged copy thereof (Exhibit C) is a true copy of said assignment.

And defendant is without knowledge that Frank L. Rabe made another or additional assignment to said Company, as alleged in the "tenth" paragraph of the bill, or that said latter assignment was recorded, as alleged, in the office of the Surrogates of the County of New York, or that the alleged copy thereof (Exhibit D) is a true copy of said latter assignment.

VII. Defendant is without knowledge that the New York Finance Company, as alleged in the "eleventh" paragraph of the bill, did make and deliver to the plaintiffs the promissory note therein referred to; and is also without knowledge that said Company, as security for the payment of said note, made the assignment as alleged in said paragraph; and is without knowledge that such assignment was recorded at the time and in the place and manner as alleged, or that the alleged copy of said note and said assignment (Exhibits E and F) are true copies thereof.

VIII. This defendant is without knowledge that said Company defaulted in the payment of said note or the interest thereon, as alleged in the "twelfth" paragraph of said bill.

IX. Defendant further answering is without knowledge of the several allegations contained in the "thirteenth" paragraph of the bill.

X. Defendant further answering is without knowledge that the plaintiffs, as alleged in the "fourteenth" paragraph of the bill, did sell and assign to Charles Z. Wolff, their right, title and interest in the estate of Conrad Braker, Jr. And is without knowledge that this last assignment was recorded at the time, place

and manner as alleged, or that the alleged copy thereof (Exhibit G) is in truth a copy thereof.

XI. And further answering this defendant is without knowledge that (as alleged in the "fifteenth" paragraph of the bill), Charles Z. Wolff sold to the plaintiffs the right, title and interest of said Wolff in the estate of Conrad Braker, Jr., and is without knowledge that the assignment just referred to was recorded at the time and in the place and manner, as alleged or that the alleged copy thereof (Exhibit H) is in truth a true copy thereof.

XII. And further answering this defendant is advised that the plaintiffs are not vested with nor entitled, as alleged, to one-half of the seven-tenths of the fund payable to Conrad Morris Braker, under the fifteenth paragraph of said will of Conrad Braker, Jr.

XIII. And further answering defendant is without knowledge that the plaintiffs made the demand alleged to have been made by them in the "seventeenth" paragraph of the bill. And defendant avers that William P. S. Melvin was not authorized to entertain such a demand nor was he empowered to pay or directed to refuse to pay said plaintiffs. Further he denies that he ever made the statement attributed by said paragraph of the bill to have been made by him to Charles H. Burr.

XIV. Defendant further avers that he has been advised that he need not answer the conclusions of law stated by plaintiffs in the "eighteenth," "nineteenth" and "twentieth" paragraphs of the bill.

XV. And for a second defence this defendant avers that upon the face of the bill this court has not cognizance of this suit.

60    Answer of Defendant Fletcher as Trustee

XVI. And for a third defence this defendant avers that upon the face of the bill it is insufficient of facts to constitute a valid cause of action.

XVII. And for a fourth defence this defendant avers that upon the face of the bill the plaintiffs have a plain, adequate and complete remedy at law.

XVIII. And for a fifth defence this defendant avers that it was provided by the statute law of the State of Pennsylvania, prevailing at the time of the making of the assignment referred to in paragraph numbered "tenth" of the bill of complaint with reference to foreign corporations (Purdon's Digest, Vol. 2, 13th ed. p. 1730), that no foreign corporation should do any business in Pennsylvania until it should have established an office or offices and appointed as an agent for the transaction of its business therein; that it should not be lawful for any such foreign corporation to do any business in said state until it should have filed in the office of the Secretary of the Commonwealth a statement under the seal of said corporation signed by its president or secretary showing the title and object of said corporation, the location of its office or offices, and the name or names of its authorized agent or agents therein, and that the certificate of the Secretary of the Commonwealth, under the seal of the Commonwealth, of the filing of such statement shall be preserved for public inspection by each of its agents in each and every of said offices. Further that any person or persons, agents, officers or employee of any such foreign corporation who should transact any business within the commonwealth for any such foreign corporation without compliance with said requirements should be guilty of a misdemeanor and subject to possible fine and imprisonment.



That after the making of said statute law and during the year 1901, another supplementary law was passed by the General Assembly in the State of Pennsylvania, which supplementary law was also prevailing at the time of the making of the said assignment referred to in paragraph "tenth" of the bill of complaint. Which latter act or law was to the effect that whenever a foreign corporation not having complied with the said pre-existing requirements should have assigned bona fide any mortgage or contract to any citizen of the State of Pennsylvania, any such person being the assignee of such delinquent corporation, in the holding of any mortgage, obligation or contract, might enforce the same in the courts of said State, notwithstanding such delinquent assignor foreign corporation had failed to file the statement and obtain the certificate required by the act or statute, of which this latter act was supplement, but subject to the proviso, nevertheless, that the latter act should not apply to any assignment of any contract or mortgage unless such assignment should have been made ten or more years prior to the passage of this latter act, namely, ten or more years prior to May 11, 1901. This defendant further avers the New York Finance Company being a corporation created by and under the laws of the State of New York, and not established, organized or chartered under the laws of the State of Pennsylvania, contrary to said statutes did business at various times in the State of Pennsylvania, since July 1, 1901, without having first established therein an office or offices and appointed an agent for the transaction of its business therein, and, besides, that it did such business without having theretofore filed in the office of the Secretary of the Commonwealth of Pennsylvania a statement under the seal of said New York Finance Com-

pany signed by the president or secretary thereof, showing the title and object of said corporation, the location of its office or offices, and the name or names of its authorized agent or agents therein.

That among the acts of business so done by the New York Finance Company in the State of Pennsylvania and not in the State of New York was the assignment referred to and described in paragraph "tenth" of the bill of complaint, and the negotiations, engagements, conferences and contracts had in Pennsylvania leading up to said assignment.

WHEREFORE this defendant prays that the bill of complaint may be dismissed with costs in favor of this defendant.

WILLIAM P. S. MELVIN,  
*Solicitor for Defendant, Austin*  
*B. Fletcher,*  
165 Broadway,  
New York City, N. Y.

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### **ANSWER OF DEFENDANT BRAKER.**

(Filed May 21, 1913.)

The respondent, Conrad Morris Braker, in answer to the bill of complaint herein:

*First.*—Alleges that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph marked "First" of the bill of complaint, except the allegation which the respondent admits, namely, that the respondent, Austin B. Fletcher, is testamentary trustee of Conrad Morris Braker, under the Last Will and Testament of Conrad Braker, Jr., deceased, and is a resident of the

City and State of New York and a citizen of the State of New York, and that the respondent, Conrad Morris Braker, is a resident of the City and State of New York and a citizen of the State of New York.

*Second.*—Denies the allegations contained in paragraph marked "Second" of the bill of complaint, except that the respondent admits that the amount in controversy exceeds the sum of Three Thousand dollars (\$3,000.00).

*Third.*—Admits the allegations contained in paragraph marked "Third" of the bill of complaint.

*Fourth.*—Admits the allegations contained in paragraph marked "Fourth" of the bill of complaint.

*Fifth.*—Admits the allegations contained in paragraph marked "Fifth" of the bill of complaint.

*Sixth.*—Admits the allegations contained in paragraph marked "Sixth" of the bill of complaint.

*Seventh.*—Admits the allegations contained in paragraph marked "Seventh" of the bill of complaint.

*Eighth.*—Admits the allegations contained in paragraph marked "Eighth" of the bill of complaint, except the respondent denies the allegation that respondent's assigns on the 25th day of February, 1913, then and there became entitled to receive and to have paid to them the principal sum of Fifty thousand dollars (\$50,000.00), held in trust for Conrad Morris Braker under the "Fifteenth" paragraph of the will of Conrad Braker, Jr., deceased.

*Ninth.*—Denies the allegations contained in paragraph marked "Ninth" of the bill of complaint.

*Tenth.*—Denies the allegations contained in paragraph marked "Tenth" of the bill of complaint.

*Eleventh.*—Denies the allegations contained in paragraph marked “Eleventh” of the bill of complaint.

*Twelfth.*—Denies the allegations contained in paragraph marked “Twelfth” of the bill of complaint.

*Thirteenth.*—Denies the allegations contained in paragraph marked “Thirteenth” of the bill of complaint.

*Fourteenth.*—Denies the allegations contained in paragraph marked “Fourteenth” of the bill of complaint.

*Fifteenth.*—Denies the allegations contained in paragraph marked “Fifteenth” of the bill of complaint.

*Sixteenth.*—Denies the allegations contained in paragraph marked “Sixteenth” of the bill of complaint.

*Seventeenth.*—Denies the allegations contained in paragraph marked “Seventeenth” of the bill of complaint.

*Eighteenth.*—Denies the allegations contained in paragraph marked “Eighteenth” of the bill of complaint.

*Nineteenth.*—Denies the allegations contained in paragraph marked “Nineteenth” of the bill of complaint, except respondent admits as alleged that Conrad Morris Braker now pretends and alleges that said assignment was in effect security for a usurious loan, and is therefore null and void, and that the said Conrad Morris Braker is a proper party defendant herein.

*Twentieth.*—Denies the allegations contained in paragraph marked “Twentieth” of the bill of complaint.

## FOR A FIRST AND SEPARATE DEFENSE.

*Twenty-first.*—That on July 21st, 1890, Conrad Braker, Jr., the father of the respondent, died at the City of New York, N. Y., having first made and published his Last Will and Testament in writing, bearing date the 20th day of February, 1890, a correct copy of which is annexed to, and made a part of the bill of complaint herein, and marked "Exhibit A."

*Twenty-second.*—That the said will was duly admitted to probate on September 13th, 1890, by the Surrogates' Court of the County of New York, in the City of New York, and recorded on Page 383, in Book of Wills No. 435, and thereupon letters testamentary were issued out of said court to Henry J. Braker, as Executor, and Frances J. Braker, as Executrix, respectively, who thereupon entered upon the administration of the estate of the said Conrad Braker, Jr., deceased, and received and collected the assets thereof.

*Twenty-third.*—That under and pursuant to the provisions of the "Fifteenth" paragraph in said Last Will and Testament the sum of Fifty thousand dollars (\$50,000.00), was to be held in trust by Henry J. Braker, for the special benefit of the Respondent, Conrad Morris Braker, until he attained the age of fifty-five years, when the said sum of fifty thousand dollars (\$50,000.00) was to be paid to him and belong to him absolutely.

*Twenty-fourth.*—That out of and from the assets of the said estate so received and collected as aforesaid, the aforementioned Executor and Executrix paid over to Henry J. Braker the said sum of Fifty thousand dollars (\$50,000.00), in trust for the special benefit of the respondent, Conrad Morris Braker, such payment

being made in accordance with the provisions of the said "Fifteenth" paragraph of the said will, and to be held in trust by the said Trustee, as likewise provided for and directed by the said paragraph of the said will.

*Twenty-fifth.*—That by an order and decree of the said Surrogates' Court of the County of New York, entered November 16th, 1897, respondent, Austin B. Fletcher, herein was appointed as Testamentary Trustee for Conrad Morris Braker under the aforementioned Last Will and Testament of Conrad Braker, Jr., deceased, to succeed the said Henry J. Braker, and to execute the unexecuted trusts of which the said Henry J. Braker was Trustee under the said will, and then and there received and now holds the said trust fund of Fifty thousand dollars (\$50,000.00) under and pursuant to the provisions of the "Fifteenth" paragraph of the said will, of which the respondent, Conrad Morris Braker, is the beneficiary as aforesaid.

*Twenty-sixth.*—That the respondent, Conrad Morris Braker, attained the age of fifty-five years on the 25th day of February, 1913, and he then became entitled to receive and have paid to him the said sum of Fifty thousand dollars (\$50,000.00), which has been held in trust for him as aforesaid under the "Fifteenth" paragraph of the said will.

*Twenty-seventh.*—That on or about the 18th day of April, 1901, at the City of New York, in the State of New York, the respondent, Conrad Morris Braker, being at that time a resident of Stamford, in the State of Connecticut, borrowed from Charles H. Burr, Arthur W. Depue and associates, of the City of Philadelphia, Pa., and the said Charles H. Burr, Arthur W. Depue and associates loaned to the said respondent

the sum of Three thousand five hundred dollars (\$3,500.00), for a period of about twelve (12) years from the date of said loan, namely, April 18th, 1901, to February 25th, 1913, upon which latter date the said loan was to be repaid; that it was then and there agreed between the respondent, Conrad Morris Braker and the said Charles H. Burr, Arthur W. Depue and associates that the latter should receive from the former as a consideration for the said loan for said space of time, in addition to the return of the principal of said loan, the sum of Thirty-one thousand five hundred dollars (\$31,500.00), payable at the maturity of said loan.

*Twenty-eighth.*—That the interest upon said loan of three thousand five hundred dollars (\$3,500.00), for said period of about twelve years at Six per cent. (6%) per annum, the highest amount allowed by law to be paid for the loan or forbearance of money, amounts to about Two thousand five hundred dollars (\$2,500.00), and no more.

*Twenty-ninth.*—That said agreement for said loan and the payment of said interest was made by the said Charles H. Burr, Arthur W. Depue and associates for the purpose on their part of receiving and taking a greater sum for the loan of said Three thousand five hundred dollars (\$3,500.00) than at the rate of Six per cent. (6%) per annum.

*Thirtieth.*—That as a cloak, cover and device to hide and conceal the said excessive illegal and usurious rate of interest from the respondent, Conrad Morris Braker, and agreed to be paid by him to the said Charles H. Burr, Arthur W. Depue and associates, the latter, in consideration of the making of said loan, at

the City of New York, N. Y., on or about April 18th, 1901, took a certain instrument in writing, bearing date April 18th, 1901, alleged to be an assignment from Conrad Morris Braker, to one Frank L. Rabe, which purported to sell and assign to said Rabe, "Seventenths of all the estate, right, title and interest of the said Conrad Morris Braker of, in and to the principal sum of Fifty thousand dollars (\$50,000.00)," to which the said Conrad Morris Braker was entitled by virtue of the "Fifteenth" paragraph of the said last will and testament of Conrad Braker, Jr., deceased, a copy of which said alleged assignment is annexed to the bill of complaint herein, made a part thereof and marked "Exhibit B."

*Thirty-first.*—That said Frank L. Rabe was at the date of said assignment and throughout the year 1901 a young man employed as a clerk in the office of the said Arthur W. Depue, in Philadelphia, who acted as a tool or dummy for Charles H. Burr, Arthur W. Depue and associates in the transactions and documents connected with the making of said loan by them to the respondent, Conrad Morris Braker; that the money for said loan was advanced and furnished by said Charles H. Burr, Arthur W. Depue and associates, and no part of it was provided by said Frank L. Rabe, who acted merely as a dummy in the transaction, the alleged assignment, dated April 18th, 1901, aforesaid, being taken in his name for convenience at the suggestion of Charles H. Burr, Arthur W. Depue and associates and being held by him for a brief period during the year 1901, until the New York Finance Company was organized as hereinafter described.

*Thirty-second.*—That on or about the 14th day of August, 1901, a corporation was organized under the



laws of the State of New York, by Charles H. Burr, Arthur W. Depue, William H. Cochran and their associates, under the name of the New York Finance Company, for the purpose of purchasing any and all kinds of real and personal property and the loaning of money thereon; that the certificate of incorporation of said New York Finance Company was filed September 30th, 1901, in the office of the Clerk of the County of New York.

*Thirty-third.*—That the said Charles H. Burr, Arthur W. Depue, William H. Cochran and their associates commenced the business of loaning money on personal property on or about October 1st, 1901, under the name of the New York Finance Company and for a few years thereafter conducted a business of loaning money on personal property under the name of the New York Finance Company, and used said corporate name merely as a cover and cloak for their personal transactions.

*Thirty-fourth.*—On information and belief that as a part of said plan and scheme and as a cover or cloak for said usurious transaction, the said Frank L. Rabe on or about October 1st, 1901, without consideration passing to him, executed a paper purporting to be an assignment by him to the said New York Finance Company, which was dated October 1st, 1901, and a copy of which said alleged assignment is annexed to the bill of complaint herein, made a part thereof and marked "Exhibit C," in and by which he attempted to sell or assign unto the New York Finance Co. inter alia all the estate, right, title and interest of the said Conrad Morris Braker under Clause "Fifteenth" of the will of Conrad Braker, Jr., deceased; that said alleged assignment from Rabe to the New York Finance Com-

pany was received by the New York Finance Company with full knowledge of the character of the transaction between the respondent Conrad Morris Braker and said Frank L. Rabe, and that the said Frank L. Rabe did not pay any consideration therefor to said respondent, and that the money loaned was loaned not by Frank L. Rabe but by Charles H. Burr, Arthur W. Depue, William H. Cochran and their associates; that the New York Finance Company was not a bona fide or innocent purchaser from said Frank L. Rabe and did not give or pay a valuable consideration to the said Frank L. Rabe for the alleged assignment from the said Frank L. Rabe to the New York Finance Company.

*Thirty-fifth.*—That said contract and agreement of the respondent, Conrad Morris Braker, with the said Charles H. Burr, Arthur W. Depue and their associates, pursuant to which said loan of Three thousand five hundred dollars (\$3,500.00) was made, and the said instrument in writing, dated April 18th, 1901, alleged to be an assignment from Conrad Morris Braker to Frank L. Rabe is and are usurious and void, being in violation of Chap. 20 of the Consolidated Laws of the State of New York.

*Thirty-sixth.*—That by reason of the premises the said Charles H. Burr, Arthur W. Depue, William H. Cochran, Frank L. Rabe and associates and the New York Finance Company acquired no interest in the said legacy bequeathed to the respondent, Conrad Morris Braker by and under the "Fifteenth" paragraph of the said will of his said father, or in the fund held under said paragraph of said will by the respondent, Austin B. Fletcher, as Trustee, in trust for Conrad Morris Braker as aforesaid or any part thereof.

*Thirty-seventh.*—On information and belief, that on or about December 19th, 1906, without the knowledge of the respondents, the said New York Finance Company executed an instrument in writing, purporting to assign and transfer to the complainants inter alia all its right, title and interest of any kind, form or description, which the said New York Finance Company had in the "Fifteenth" paragraph of the said last will and testament of Conrad Braker, Jr., deceased, by virtue of the aforesaid alleged assignment made by the said Conrad Morris Braker to the said Frank L. Rabe, bearing date April 18th, 1901, and attached to the bill of complaint as "Exhibit B," as alleged collateral security for the payment on the 21st day of July, 1910, of a note for Ten thousand dollars (\$10,000.00), alleged to have been given by the said New York Finance Company to the complainants, together with interest at the rate of Six per cent. (6%) per annum and any note or notes which might be given in renewal thereof.

*Thirty-eighth.*—On information and belief, that the complainants for some time prior to December 19th, 1906, had had business relations with Charles H. Burr and his associates, and those active in the management of the New York Finance Company, were familiar with the character of the business transacted by it and by Charles H. Burr, Arthur W. Depue and their associates in the name of the New York Finance Company, and the character of the security offered as collateral to the said loan alleged to have been made by the complainants to the New York Finance Company.

*Thirty-ninth.*—On information and belief, that the complainants were not bona fide or innocent purchasers from the New York Finance Company, and did not loan the said Ten thousand dollars (\$10,000.00)

to the said New York Finance Company, or give or pay a valuable consideration for the alleged assignment from the New York Finance Company to them.

*Fortieth.*—On information and belief, that on or about December 19th, 1906, without the knowledge of the respondent, the New York Finance Company in consideration of the extension by the complainants of the time for the payment of said note of Ten thousand dollars (\$10,000.00) until February 15th, 1913, signed and delivered to the complainants a note for Three thousand three hundred and thirty-three dollars (\$3,333.00), payable on February 15th, 1913, and as security for the payment of said note, the New York Finance Company executed and delivered to the complainants an alleged assignment dated December 19th, 1906, which purported to assign and transfer to the complainants the said one-half part of any and all monies coming to the New York Finance Company by virtue of the aforementioned alleged assignments from Conrad Morris Braker to Frank L. Rabe, dated April 18th, 1901.

*Forty-first.*—On information and belief, that on or about the 3rd day of May, 1911, the complainants herein went through a form of selling at public auction the interest received by them under the alleged assignment from the New York Finance Company to the complainants, dated December 19th, 1906, by selling the same to one Charles E. Wolff, who was a mere dummy or straw man selected for the purpose; that thereafter alleged assignments dated May 6, 1911, were executed and delivered by the complainants to the said Charles E. Wolff, and from the said Charles E. Wolff back to the complainants; that the alleged sale was a sham and the alleged assignments were without con-

sideration, and the whole transaction was carried through for the apparent purpose of foreclosing the equity of redemption which was thought then to reside in the New York Finance Company, and upon the ground that the New York Finance Company had failed to pay its note of Ten thousand dollars (\$10,000.00) signed and delivered to the complainants as aforesaid; that at the time of said alleged sale and the said assignments of May 6th, 1911, the said note of Ten thousand dollars (\$10,000.00), given by the New York Finance Company to the complainants was not yet due, the time for the payment of the same having been extended to February 15th, 1913, as hereinbefore described; that the said assignments from the complainants to Charles E. Wolff and from Charles E. Wolff to the complainants were without consideration and void, and conferred no title upon complainants, and that the complainants were not bona fide or innocent purchasers without notice of the character of the proceeding assignments.

*Forty-second.*—That before the 25th day of February, 1913, the respondent, Conrad Morris Braker, elected to avoid said contract and agreement of loan between him and Charles H. Burr, Arthur W. Depue and associates, and said alleged assignment made by him to Frank L. Rabe on April 18th, 1901, on the ground of usury, and notified the respondent, Austin B. Fletcher, as Trustee, that the respondent, Conrad Morris Braker, objected to the payment to the complainants herein of any part of said trust fund, held by the said Trustees under the "Fifteenth" paragraph of the will of Conrad Braker, Jr., deceased, on account of and by reason of any alleged assignments from the respondent, Conrad Morris Braker, to Frank L. Rabe,

and from Frank L. Rabe to the New York Finance Company, or from the New York Finance Company to the complainants herein.

*Forty-third.*—That if the alleged assignments from the respondent, Conrad Morris Braker, to the said Frank L. Rabe, dated April 18th, 1901, and the alleged assignment from the said Frank L. Rabe to the New York Finance Company, dated October 1st, 1901, and the alleged assignment from the New York Finance Company to the complainants herein, dated December 19th, 1906, are declared void, the respondent, Conrad Morris Braker will be entitled to the sum of Thirty-five thousand dollars (\$35,000.00) as a part of the legacy bequeathed to him in, under and by the "Fifteenth" paragraph of the will of Conrad Braker, Jr., deceased, free from any lien or claim of the complainants herein.

*Forty-fourth.*—That the respondent, Conrad Morris Braker, was on April 18th, 1901, a non-resident of the State of New York, having his residence then at Stamford, in the State of Connecticut, and did not become a resident of the State of New York until about the year 1908, and, on information and belief, that on April 18th, 1901, the said Frank L. Rabe was, and at all times since then, has been a non-resident of the State of New York, and on April 18th, 1901, and has since, resided in the City of Philadelphia, in the State of Pennsylvania.

FOR A SECOND AND SEPARATE DEFENSE.

*Forty-fifth.*—The respondent, Conrad Morris Braker, repeats the allegations contained in the preceding paragraphs of this answer numbered 21st,

22nd, 23rd, 24th, 25th and 26th, and makes the same a part of his second defense.

*Forty-sixth.*—That on or about the eighteenth day of April, 1901, at the City of New York, in the State of New York, the respondent, Conrad Morris Braker, being at that time a resident of Stamford, in the State of Connecticut, borrowed from Charles H. Burr, Arthur W. Depue and associates, of the City of Philadelphia, Pa., and the said Charles H. Burr, Arthur W. Depue and associates, loaned to the said respondent the sum of Three thousand five hundred dollars (\$3,500.00) for a period of about twelve (12) years from the date of said loan, namely April 18th, 1901, to February 25th, 1913, upon which latter date the said loan was to be repaid with the interest accumulated thereon at the rate of Six per cent. (6%) per annum.

*Forty-seventh.*—That the paper dated April 18th, 1901, executed and delivered by Conrad Morris Braker to Frank L. Rabe, a copy of which is annexed to the bill of complaint and marked "Exhibit B," although absolute on its face and in form and purporting to sell, assign and transfer to Frank L. Rabe seven-tenths of all the estate, right, title and interest of the said Conrad Morris Braker, of, in and to the principal sum of Fifty thousand dollars (\$50,000.00), to which he was entitled in and by virtue of the "Fifteenth" clause of the will of Conrad Braker, Jr., deceased, was in truth and in fact, and was intended to be, security for the payment of said loan of Three thousand five hundred dollars (\$3,500.00) as aforesaid.

*Forty-eighth.*—That at the time of the making of said loan of Three thousand five hundred dollars (\$3,500.00) to the respondent, Conrad Morris Braker,

the said Charles H. Burr, Arthur W. Depue and associates required him to execute said assignment to said Frank L. Rabe, as security for the repayment of said loan and interest on February 25th, 1913, and on or about April 18th, 1901, the respondent, Conrad Morris Braker, executed and delivered a paper which was represented to him by said Charles H. Burr, Arthur W. Depue and their associates to be in the nature of a security for the repayment of said loan; that the said Frank L. Rabe was at that time, namely, April 18th, 1901, and throughout the year 1901, a young man employed as a clerk in the office of the said Arthur W. Depue, in Philadelphia, and acted as a tool or dummy for Charles H. Burr, Arthur W. Depue and associates in the transactions and documents connected with the making of said loan by them to the respondent, Conrad Morris Braker; that the money for said loan was advanced and furnished by said Charles H. Burr, Arthur W. Depue and associates, and no part of it was provided by said Frank L. Rabe, who acted merely as a dummy in the transaction, the alleged assignment dated April 18th, 1901, aforesaid, being taken in his name for convenience and as a part of the fraudulent scheme hereinafter described at the suggestion of Charles H. Burr, Arthur W. Depue and associates, and being held by said Rabe for a brief period during the year 1901, until the New York Finance Company was organized; that the respondent, Conrad Morris Braker, did not read said paper alleged to be an assignment to Frank L. Rabe, and dated April 18th, 1901, but the same either was not read to him or if read to him it was read to him by Charles H. Burr, or Arthur W. Depue or William H. Cochran, and in the reading of it the fact that it was on its face and in form an absolute sale and assignment was suppressed, or the import of said paper, signed by



the respondent, Conrad Morris Braker, and its legal effect were not explained to him; that the said respondent is not a lawyer, and was not acquainted with or familiar with instruments of the character of this paper or the legal effect thereof, and was not at the time of the signing of the said paper represented by a lawyer; that when the negotiations connected with the making of said loan of Three Thousand Five Hundred Dollars (\$3,500.00) took place, the said respondent was dealing with Charles H. Burr, Arthur W. Depue and William H. Cochran, all of whom were lawyers, and the said respondent relied upon the statements and representations made by them before and at the time he signed said alleged assignment to said Rabe, and supposed and believed, and it was represented to him by the said Charles H. Burr, Arthur W. Depue and William H. Cochran and their associates, that the paper so signed by him was merely a security for the payment of said loan of Three Thousand Five Hundred Dollars (\$3,500.00); that the said respondent did not learn of the real form and character and legal effect of the said alleged assignment to Frank L. Rabe, dated April 18th, 1901, until shortly before he became fifty-five years of age, namely, February 25th, 1913; that the said respondent had previously, before this transaction, borrowed from two other persons, giving as security assignments of a legacy coming to him under the will of Conrad Braker, Jr., deceased, on the 21st day of July, 1905, and the said respondent supposed and believed and was induced by the representations and statements of the said Charles H. Burr, Arthur W. Depue, William H. Cochran and their associates to suppose and believe, that the paper signed by him on April 18th, 1901, alleged to be an assignment to Frank L. Rabe, was of the same nature and form and of the

same legal effect as those he had signed in connection with the two previous loans.

*Forty-ninth.*—That the execution and delivery of the alleged assignment dated April 18th, 1901, described in paragraph "Ninth" of the bill of complaint, a copy of which is thereto annexed as "Exhibit B," by the respondent, Conrad Morris Braker, to the said Frank L. Rabe, was induced by and made upon the faith of certain statements, explanations and representations made to him by Charles H. Burr, Arthur W. Depue, William H. Cochran and associates, which said statements, explanations and representations the respondent has since learned were wholly false and fraudulent, and were known by the said Charles H. Burr, Arthur W. Depue, William H. Cochran and associates at the time they were made to have been false and fraudulent; that said statements, explanations and representations consisted of statements made to the said respondent that the said paper which he was induced to sign was in form and in effect merely security for the payment of said loan, and of the same general character as the papers previously signed by him in connection with two previous loans made to him by other parties, and that it was necessary for him to sign said paper in the form aforesaid in order to secure said loan, all of which statements, explanations and representations were wholly false and fraudulent, as the said respondent has since learned.

That said respondent, Conrad Morris Braker, wholly relying upon the truth of said statements, explanations and representations of the said Charles H. Burr, Arthur W. Depue, William H. Cochran and associates, and believing the same to be true, executed and delivered said alleged assignment dated April 18th, 1901.

*Fiftieth.*—That the said statements, explanations and representations and each of them made as aforesaid to said respondent by the said Charles H. Burr, Arthur W. Depue, William H. Cochran and associates were false and fraudulent, and were known to be false and fraudulent by the said Charles H. Burr, Arthur W. Depue, William H. Cochran and associates at the time they were made; that they were made for the purpose of inducing the execution by the said respondent of the alleged assignment to said Frank L. Rabe, dated April 18th, 1901, and that said alleged assignment was executed and delivered upon the faith of said statements, explanations and representations.

*Fifty-first.*—That all of the said acts of the said Charles H. Burr, Arthur W. Depue, William H. Cochran and associates were part of a plan to cheat and defraud the said respondent, Conrad Morris Braker, of his inheritance to the extent of Thirty-five Thousand Dollars (\$35,000.00), and to obtain it for their own use, purposes and control, and to deprive said respondent of his right, title and interest therein for the unconscionable small sum of Three Thousand Five Hundred Dollars (\$3,500.00).

*Fifty-second.*—That by reason of the premises, the said Frank L. Rabe, Charles H. Burr, Arthur W. Depue, William H. Cochran and associates acquired no interest in the said legacy bequeathed to the respondent, Conrad Morris Braker, by and under the provision of the "Fifteenth" paragraph of the will of his father, or in the funds held under said paragraph in said will by the respondent, Austin B. Fletcher, as Trustee, in trust for Conrad Morris Braker, as aforesaid, or any part thereof.

*Fifty-third.*—That said Frank L. Rabe was at the date of said assignment and throughout the year 1901 a young man employed as a clerk in the office of the said Arthur W. Depue, in Philadelphia, who acted as a tool or dummy for Charles H. Burr, Arthur W. Depue and associates in the transactions and documents connected with the making of said loan by them to the respondent, Conrad Morris Braker; that the money for said loan was advanced and furnished by said Charles H. Burr, Arthur W. Depue and associates, and no part of it was provided by said Frank L. Rabe, who acted merely as a dummy in the transaction, the alleged assignment, dated April 18th, 1901, aforesaid, being taken in his name for convenience at the suggestion of Charles H. Burr, Arthur W. Depue and associates, and being held by him for a brief period during the year 1901, until the New York Finance Company was organized as hereinafter described.

*Fifty-fourth.*—That on or about the 14th day of August, 1901, a corporation was organized under the laws of the State of New York, by Charles H. Burr, Arthur W. Depue, William H. Cochran and their associates, under the name of the New York Finance Company, for the purpose of purchasing any and all kinds of real and personal property and the loaning of money thereon; that the certificate of incorporation of said New York Finance Company was filed September 30th, 1901, in the office of the Clerk of the County of New York.

*Fifty-fifth.*—That the said Charles H. Burr, Arthur W. Depue, William H. Cochran and their associates commenced the business of loaning money on personal property on or about October 1st, 1901, under the name of the New York Finance Company, and for a

few years thereafter conducted a business of loaning money on personal property under the name of the New York Finance Company, and used said corporate name merely as a cover and cloak for their personal transactions.

*Fifty-sixth.*—On information and belief, that as a part of said plan and scheme and as a cover or cloak for said transaction, the said Frank L. Rabe, on or about October 1st, 1901, without consideration passing to him, executed a paper purporting to be an assignment by him to the said New York Finance Company, which was dated October 1st, 1901, and a copy of which said alleged assignment is annexed to the bill of complaint herein, made a part thereof and marked "Exhibit C," in and by which he attempted to sell or assign unto the New York Finance Company, inter alia, all the estate, right, title and interest of the said Conrad Morris Braker under clause "Fifteenth" of the will of Conrad Braker, Jr., deceased; that said alleged assignment from Rabe to the New York Finance Company was received by the New York Finance Company with full knowledge of the character of the transaction between the respondent, Conrad Morris Braker, and said Frank L. Rabe, and that the said Frank L. Rabe did not pay any consideration therefor to said respondent, and that the money loaned was loaned, not by Frank L. Rabe, but by Charles H. Burr, Arthur W. Depue, William H. Cochran and their associates; that the New York Finance Company was not a bona fide or innocent purchaser from said Frank L. Rabe, and did not give or pay a valuable consideration to the said Frank L. Rabe for the alleged assignment from the said Frank L. Rabe to the New York Finance Company.

*Fifty-seventh.*—That by reason of the premises the said Charles H. Burr, Arthur W. Depue, William H. Cochran, Frank L. Rabe and associates and the New York Finance Company acquired no interest in the said legacy bequeathed to the respondent, Conrad Morris Braker, by and under the "Fifteenth" paragraph of the said will of his said father, or in the fund held under said paragraph of said will by the respondent, Austin B. Fletcher, as Trustee, in trust for Conrad Morris Braker, as aforesaid, or any part thereof.

*Fifty-eighth.*—On information and belief, that on or about December 19th, 1906, without the knowledge of the respondents, the said New York Finance Company executed an instrument in writing, purporting to assign and transfer to the complainants, inter alia, all its right, title and interest of any kind, form or description which the said New York Finance Company had in the "Fifteenth" paragraph of the said last will and testament of Conrad Braker, Jr., deceased, by virtue of the aforesaid alleged assignment made by the said Conrad Morris Braker to the said Frank L. Rabe, bearing date April 18th, 1901, and attached to the bill of complaint as "Exhibit B," as alleged collateral security for the payment on the 21st day of July, 1910, of a note for ten thousand dollars (\$10,000.00), alleged to have been given by the said New York Finance Company to the complainants, together with interest at the rate of six per cent. (6%) per annum and any note or notes which might be given in renewal thereof.

*Fifty-ninth.*—On information and belief, that the complainants for some time prior to December 19th, 1906, had had business relations with Charles H. Burr and his associates and with those active in the manage-

ment of the New York Finance Company, were familiar with the character of the business transacted by it and by Charles H. Burr, Arthur W. Depue and their associates in the name of the New York Finance Company, and the character of the security offered as collateral to the said loan alleged to have been made by the complainants to the New York Finance Company.

*Sixtieth.*—On information and belief, that the complainants were not bona fide or innocent purchasers from the New York Finance Company and did not loan the said ten thousand dollars (\$10,000.00) to the said New York Finance Company, or give or pay a valuable consideration for the alleged assignment from the New York Finance Company to them.

*Sixty-first.*—On information and belief, that on or about December 19th, 1906, without the knowledge of the respondent, the New York Finance Company, in consideration of the extension by the complainants of the time for the payment of said note of ten thousand dollars (\$10,000.00) until February 15th, 1913, signed and delivered to the complainants a note for three thousand three hundred and thirty-three dollars (\$3,333.00), payable on February 15th, 1913, and as security for the payment of said note, the New York Finance Company executed and delivered to the complainants an alleged assignment dated December 19th, 1906, which purported to assign and transfer to the complainants the said one-half part of any and all moneys coming to the New York Finance Company by virtue of the aforementioned alleged assignment from Conrad Morris Braker to Frank L. Rabe, dated April 18th, 1901.

*Sixty-second.*—On information and belief, that on or about the 3rd day of May, 1911, the complainants

herein went through a form of selling at public auction the interests received by them under the alleged assignment from the New York Finance Company to the complainants, dated December 19th, 1906, by selling the same to one Charles E. Wolff, who was a mere dummy or straw man selected for the purpose; that thereafter alleged assignments dated May 6th, 1911, were executed and delivered by the complainants to the said Charles E. Wolff, and from the said Charles E. Wolff back to the complainants; that the alleged sale was a sham and the alleged assignments were without consideration, and the whole transaction was carried through for the apparent purpose of foreclosing the equity of redemption which was thought then to reside in the New York Finance Company, and upon the ground that the New York Finance Company had failed to pay its note of ten thousand dollars (\$10,000.00), signed and delivered to the complainants as aforesaid; that at the time of said alleged sale and the said assignments of May 6th, 1911, the said note of ten thousand dollars (\$10,000.00), given by the New York Finance Company to the complainants was not yet due, the time for the payment of the same having been extended to February 15th, 1913, as hereinbefore described; that the said assignments from the complainants to Charles E. Wolff and from Charles E. Wolff to the complainants were without consideration and void, and conferred no title upon complainants, and that the complainants were not bona fide or innocent purchasers without notice of the character of the preceding assignments.

*Sixty-third.*—That before the 25th day of February, 1913, the respondent, Conrad Morris Braker, elected to avoid said contract and agreement of loan



between him and Charles H. Burr, Arthur W. Depue and associates, and said alleged assignment made by him to Frank L. Rabe on April 18th, 1901, on the ground of fraud, and notified the respondent, Austin B. Fletcher, as Trustee, that the respondent, Conrad Morris Braker, objected to the payment to the complainants herein of any part of said trust fund, held by the said Trustee under the "Fifteenth" paragraph of the will of Conrad Braker, Jr., deceased, on account of and by reason of any alleged assignments from the respondent, Conrad Morris Braker, to Frank L. Rabe, and from Frank L. Rabe to the New York Finance Company, or from the New York Finance Company to the complainants herein.

*Sixty-fourth.*—That if the alleged assignments from the respondent, Conrad Morris Braker, to the said Frank L. Rabe, dated April 18th, 1901, and the alleged assignment from the said Frank L. Rabe to the New York Finance Company, dated October 1st, 1901, and the alleged assignment from the New York Finance Company to the complainants herein, dated December 19th, 1906, are declared void, the respondent, Conrad Morris Braker, will be entitled to the sum of Thirty-five Thousand Dollars (\$35,000.00) as a part of the legacy bequeathed to him in, under and by the "Fifteenth" paragraph of the will of Conrad Braker, Jr., deceased, free from any lien or claim of the complainants herein.

*Sixty-fifth.*—That the respondent, Conrad Morris Braker, hereby tenders and offers to pay to the complainants herein, or to the person or persons whom this Honorable Court shall adjudge to be entitled to receive the same, the amount of said loan, namely, three thousand five hundred dollars (\$3,500.00), re-

ceived by him at the time of the signing of said paper dated April 18th, 1901, alleged to be an assignment to the New York Finance Company, with legal interest thereon from April 18th, 1901, to be computed by this Court, and hereby tenders and offers to pay, and upon the trial of this action will ask leave of this Court to tender and pay to the complainants in this action, or such person or persons as this Court may determine are entitled to receive the same, a part of said sum loaned, with interest, which shall bear the same ratio to the whole sum loaned, namely, three thousand five hundred dollars (\$3,500.00), as the amount claimed by the complainants, namely, seventeen thousand five hundred dollars (\$17,500.00), bears to the total amount of the said legacy, namely, thirty-five thousand dollars (\$35,000.00), alleged to have been assigned by Conrad Morris Braker to the said Frank L. Rabe, by said alleged assignment dated April 18th, 1901, or, in other words, a sum equivalent to one-half of the amount of said loan of three thousand five hundred dollars (\$3,500.00), and interest.

That this action was commenced on February 25th, 1902, the day said loan of three thousand five hundred dollars (\$3,500.00) became due and payable, and for this reason and because the complainants and Frank L. Rabe, Charles H. Burr, Arthur W. Depue, William H. Cochran and associates are non-residents, and the New York Finance Company has long since ceased to maintain an office within the State of New York, the respondent could not sooner make the tender and offer aforesaid.

*Sixty-sixth.*—That the respondent, Conrad Morris Braker, was on April 18th, 1901, a non-resident of the State of New York, having his residence then at Stam-

ford, in the State of Connecticut, and did not become a resident of the State of New York until about the year 1908, and, on information and belief, that on April 18th, 1901, the said Frank L. Rabe was, and at all times since then, has been a non-resident of the State of New York, and on April 18th, 1901, and has since, resided in the City of Philadelphia, in the State of Pennsylvania.

FOR A THIRD AND SEPARATE DEFENSE.

*Sixty-seventh.*—That the alleged assignment from the New York Finance Company to the complainants, dated December 19th, 1906, and the alleged assignment from the complainants to Charles E. Wolff, dated May 6th, 1911, and the alleged assignment from Charles E. Wolff to the complainants, dated May 6th, 1911, copies of which are annexed to the bill of complaint herein and marked respectively Exhibits "F," "G" and "H," were not executed, acknowledged and certified according to law, and there was no valuable or adequate consideration for said alleged assignments.

FOR A FOURTH AND SEPARATE DEFENSE.

*Sixty-eighth.*—The respondent, Conrad Morris Braker, alleges that it was provided by the statute law of the State of Pennsylvania, prevailing at the time of the making of the assignment referred to in paragraph numbered "tenth" of the bill of complaint with reference to foreign corporations (Purdon's Digest, Vol. 2, 13th Ed., p. 1730), that no foreign corporation should do any business in Pennsylvania until it should have established an office or offices and appointed an agent for the transaction of its business therein; that it should not be lawful for any such foreign corporation to do any business in said State until

it should have filed in the office of the Secretary of the Commonwealth a statement under the seal of said corporation signed by its president or secretary, showing the title and object of said corporation, the location of its office or offices, and the name or names of its authorized agent or agents therein, and that the certificate of the Secretary of the Commonwealth, under the seal of the Commonwealth, of the filing of such statement shall be preserved for public inspection by each of its agents in each and every of said offices. Further that any person or persons, agents, officers or employee of any such foreign corporation who should transact any business within the Commonwealth for any such foreign corporation without compliance with said requirements should be guilty of a misdemeanor and subject to possible fine and imprisonment.

That after the making of said statute law and during the year 1901, another supplementary law was passed by the General Assembly in the State of Pennsylvania, which supplementary law was also prevailing at the time of the making of the said assignment referred to in paragraph "tenth" of the bill of complaint; which latter act or law was to the effect that whenever a foreign corporation not having complied with the said pre-existing requirements should have assigned bona fide any mortgage or contract to any citizen of the State of Pennsylvania, any such person being the assignee of such delinquent corporation, in the holding of any mortgage, obligation or contract, might enforce the same in the courts of said State, notwithstanding such delinquent assignor foreign corporation had failed to file the statement and obtain the certificate required by the act or statute, of which this latter act was a supplement, but subject to the pro-

viso, nevertheless, that the latter act should not apply to any assignment of any contract or mortgage unless such assignment should have been made ten or more years prior to the passage of this latter act, namely, ten or more years prior to May 11th, 1901. This defendant further avers that the New York Finance Company, being a corporation created by and under the laws of the State of New York, and not established, organized or chartered under the laws of the State of Pennsylvania, contrary to said statutes did business at various times in the State of Pennsylvania, since July 1st, 1901, without having first established therein an office or offices and appointed an agent for the transaction of its business therein, and, besides, that it did such business without having theretofore filed in the office of the Secretary of the Commonwealth of Pennsylvania a statement under the seal of said New York Finance Company, signed by the president or secretary thereof, showing the title and object of said corporation, the location of its office or offices, and the name or names of its authorized agent or agents therein.

That among the acts of business so done by the New York Finance Company in the State of Pennsylvania and not in the State of New York was the assignment referred to and described in paragraph "tenth" of the bill of complaint, and the negotiations, engagements, conferences and conference, had in Pennsylvania leading up to said assignment.

FOR A FIFTH AND SEPARATE DEFENSE.

*Sixty-ninth.*—That the United States District Court for the Southern District of New York has no jurisdiction of the parties to this action or of the subject-matter thereof.

## FOR A SIXTH AND SEPARATE DEFENSE.

*Seventieth.*—On information and belief, that Frank L. Rabe, of Philadelphia, Pa., New York Finance Company and Charles E. Bushnell, of New York City, N. Y., have or claim to have an interest in the estate of Conrad Braker, Jr., deceased, under the alleged assignment, dated April 18th, 1901, from Conrad Morris Braker to the said Frank L. Rabe, and they are, therefore, necessary parties to this action.

## FOR A SEVENTH AND SEPARATE DEFENSE.

*Seventy-first.*—That the bill of complaint herein on its face does not state sufficient facts to constitute a valid cause of action in equity.

Wherefore, the respondent, Conrad Morris Braker, demands judgment,

(1) That said loan of three thousand five hundred dollars (\$3,500.00) was made as the result of a usurious or fraudulent contract, and that the same be adjudged and decreed null and void;

(2) That said alleged assignments from Conrad Morris Braker to Frank L. Rabe, from Frank L. Rabe to the New York Finance Company, from the New York Finance Company to the complainants, from the complainants to Charles E. Wolff and from Charles E. Wolff to the complainants, be adjudged and decreed to be illegal and null and void, and be ordered to be delivered up and cancelled.

Or, in case this Honorable Court shall refuse to render judgment as heretofore prayed for, then in that event the respondent, Conrad Morris Braker, demands judgment as follows:

(3) That said alleged assignments from Conrad Morris Braker to Frank L. Rabe, dated April 18th, 1901, may be adjudged and decreed to be invalid, as procured by fraud, and to have been and to be a mortgage, and that it was given only as collateral security for the payment of said indebtedness of three thousand five hundred dollars (\$3,500.00), with legal interest thereon, and that said interest may be ascertained and computed by this Court.

(4) That it be adjudged and decreed that the New York Finance Company was not a bona fide purchaser from Frank L. Rabe, and that the complainants herein were not bona fide purchasers from the New York Finance Company.

(5) That the complainants may be ordered and directed by this Court to receive and accept a sum equal to one-half of the said loan of three thousand five hundred dollars (\$3,500.00), with legal interest thereon from April 18th, 1901, as ascertained and computed by this Court, and that, upon payment of said sum of money into the Court by the respondent, Conrad Morris Braker, the said assignments from Conrad Morris Braker to Frank L. Rabe and from Frank L. Rabe to the New York Finance Company, and from the New York Finance Company to the complainants, and from the complainants to Charles C. Wolff, and from Charles C. Wolff to the complainants be discharged and cancelled.

(6) That the bill of complaint herein be dismissed with costs, and

(7) That the respondent, Conrad Morris Braker, may have such other and further judgment, order or

relief in the premises as may seem to this Court just and equitable.

SAFFORD A. CRUMMEY,  
*Solicitor for Respondent,*  
*Conrad Morris Braker.*

Office and P. O. Address, 165  
Broadway, Borough of Man-  
hattan, New York City.

Dated, New York City,  
May 20th, 1913.

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**COMPLAINANTS' REPLY TO ANSWER OF RE-  
SPONDENT, CONRAD MORRIS BRAKER.**

(Filed May 31, 1913.)

These complainants, John A. S. Brown and Frank E. Schermerhorn, as Trustee for Clara Schermerhorn, under the Last Will and Testament of Thomas Cunningham, deceased, repeating and affirming the averments made by them in the Bill of Complaint heretofore filed in this cause, in reply to the so-called "Answer" of Conrad Morris Braker, respondent herein:

*First.*—Admit the allegations contained in the paragraph marked "Twenty-first" in said "Answer."

*Second.*—Admit the allegation contained in paragraph marked "Twenty-second" in said "Answer."

*Third.*—Admit the allegations contained in the paragraph marked "Twenty-third" in said "Answer."

*Fourth.*—Admit the allegations contained in the paragraph marked "Twenty-fourth" in said "Answer."

*Fifth.*—Admit the allegations contained in the paragraph marked "Twenty-fifth" in said "Answer."



*Sixth.*—Deny the allegations contained in the paragraph marked "Twenty-sixth" of said "Answer," except that complainants admit that the said Conrad Morris Braker attained the age of fifty-five years on the 25th day of February, 1913.

*Seventh.*—In answer to the paragraphs marked "Twenty-seventh," "Twenty-eighth," "Twenty-ninth," "Thirtieth," "Thirty-first," "Thirty-second," "Thirty-third," "Thirty-fourth," "Thirty-fifth" and "Thirty-sixth" of said "Answer," complainants deny each and every allegation therein contained; that no loan in the sum of \$3500, or in any sum whatever, was, on or about the 18th day of April, 1901, made by the said New York Finance Company or by Charles H. Burr, Arthur W. Depue and any person or persons associated with them, to Conrad Morris Braker. On the contrary, complainants aver that on the 18th day of April, 1901, Conrad Morris Braker sold absolutely to one Frank L. Rabe seven-tenths of his contingent interest in his father's estate, as is fully averred and set forth in complainant's Bill.

*Eighth.*—Admit the allegations contained in the paragraph marked "Thirty-seventh" of said "Answer," except that complainants neither admit nor deny the allegation that the assignment of December 19th, 1906, was without the knowledge of the respondent, but asks that if the same be competent, relevant and material, due proof thereof be made.

*Ninth.*—Deny the allegations contained in the paragraph marked "Thirty-eighth" of said "Answer."

*Tenth.*—Deny the allegations contained in the paragraph marked "Thirty-ninth" of said "Answer."

*Eleventh.*—Deny the allegations contained in the paragraph marked "Fortieth" of said "Answer."

*Twelfth.*—Deny the allegations contained in the paragraph marked "Forty-first" in said "Answer," except that complainants admit that they caused to be sold at public auction, the interest received by them under the assignment from the New York Finance Company to the plaintiffs, dated December 19th, 1906, to Charles Z. Wolff, and that thereafter assignments dated May 6th, 1911, were executed and delivered by the complainants to the said Charles Z. Wolff and from the said Charles Z. Wolff back to the complainants, as averred in the Bill of Complaint hereinbefore filed.

*Thirteenth.*—Neither admit nor deny the allegations contained in the paragraph marked "Forty-second" in said "Answer," and are advised by counsel, believe and therefore say that the same are not material, competent or relevant, and further that any attempted election by Conrad Morris Braker to avoid the assignment, averred in the Bill of Complaint heretofore filed herein, to have been made by him, of the interest bequeathed to him under the "Fifteenth" paragraph of the said Last Will and Testament of his father, Conrad Braker, Jr., deceased, are void and of none effect.

*Fourteenth.*—Neither admit nor deny the allegations contained in the paragraph marked "Forty-third" in said "Answer," and ask that if the same be competent, relevant and material, due proof thereof be made.

*Fifteenth.*—Neither admit nor deny the allegations contained in the paragraph marked "Forty-fourth" in said "Answer," and ask that if the same

be competent, material and relevant, due proof thereof be made.

*Sixteenth.*—In answer to the paragraph marked "Forty-fifth of said "Answer," repeat the averments contained in the preceding paragraphs of this Reply, numbered First, Second, Third, Fourth, Fifth and Sixth, and make the same a part of their reply to said paragraph marked "Forty-fifth."

*Seventeenth.*—Deny the allegations contained in the paragraph numbered "Forty-sixth" in said "Answer," except that complainants aver that they have no knowledge or information sufficient to form a belief as to the truth of the allegation that the said respondent was, on the 18th day of April, 1901, a resident of Stamford, in the State of Connecticut.

*Eighteenth.*—Deny the allegations contained in paragraphs marked "Forty-seventh" and "Forty-eighth" of said "Answer."

*Nineteenth.*—Deny the allegations contained in paragraph marked "Forty-ninth" in said "Answer."

*Twentieth.*—Deny the allegations contained in the paragraph marked "Fiftieth" of said "Answer."

*Twenty-first.*—Deny the allegations contained in the paragraph marked "Fifty-first" in said "Answer."

*Twenty-second.*—Deny the allegations contained in the paragraph marked "Fifty-second" in said "Answer."

*Twenty-third.*—Deny the allegations contained in the paragraph marked "Fifty-third" of said "Answer."

*Twenty-fourth.*—Admit that the New York Finance Company was incorporated during the year

1901, as averred in the paragraph marked "Twenty-fourth" of said "Answer"; that the certificate of incorporation was filed September 30th, 1901, in the office of the Clerk of the County of New York; but complainants have no knowledge as to the incorporators of said Company, except that they are informed, believe and aver that neither Charles H. Burr nor Arthur W. Depue were incorporators of said New York Finance Company.

*Twenty-fifth.*—Deny the allegations contained in paragraph marked "Fifty-fifth" in said "Answer," except that complainants admit that the New York Finance Company commenced business on or about the first day of October, 1901.

*Twenty-sixth.*—Deny the allegations contained in the paragraph marked "Fifty-sixth" in said "Answer." Complainants repeat the averments made by them in the paragraph numbered "Tenth" in the Bill of Complaint as to the assignment by Frank L. Rabe to the New York Finance Company under date of October 1st, 1901. They deny that said transaction was a cover or cloak for any transaction not appearing in said assignment. They deny that the said assignment made by Rabe to the New York Finance Company was made without consideration, but aver that the consideration therefor was an adequate, valid consideration paid by the said New York Finance Company to the said Rabe and vested in the said New York Finance Company title in fee to the interest assigned therein; that the said New York Finance Company was a bona fide purchaser for value thereof, and that the transaction was not in any respect a loan, but was a complete sale and conveyance.

*Twenty-seventh.*—Deny the allegations contained in the paragraph marked “Fifty-seventh” of said “Answer.”

*Twenty-eighth.*—Admit the allegations contained in the paragraph marked “Fifty-eighth” of said “Answer,” except that complainants neither admit nor deny that the assignment referred to in the said paragraph was without the knowledge of the said Conrad Morris Braker, but ask that if the same be competent, relevant and material, due proof thereof be made.

*Twenty-ninth.*—Neither admit nor deny the allegations contained in the paragraph marked “Fifty-ninth” of said “Answer,” but ask that if the same be relevant, competent and material, due proof thereof be made. Complainants, however, deny that Charles H. Burr, Arthur W. Depue, or either of them, ever transacted business under the name of the New York Finance Company.

*Thirtieth.*—Deny the allegations of the paragraph marked “Sixtieth” in said “Answer.”

*Thirty-first.*—Deny the allegations contained in paragraph marked “Sixty-first” of said “Answer.”

*Thirty-second.*—Deny the allegations contained in the paragraph marked “Sixty-second” in said “Answer,” except that complainants admit that they caused to be sold at public auction the interest received by them under the assignment from the New York Finance Company to the plaintiffs, dated December 19th, 1906, to Charles Z. Wolff, and that thereafter assignments dated May 6th, 1911, were executed and delivered by the said complainants to the said Charles Z. Wolff and from the said Charles Z. Wolff back to the complainants.

*Thirty-third.*—Neither admit nor deny the allegations contained in the paragraph marked “Sixty-third” in said “Answer,” and are advised by counsel, believe and therefore say that the same are not material, competent and relevant, and further that any attempted election by Conrad Morris Braker to avoid the assignments of the interest bequeathed to him under the Last Will and Testament of his father, Conrad Braker, Jr., are void and of none effect.

*Thirty-fourth.*—Neither admit nor deny the allegations contained in the paragraph marked “Sixty-fourth” of said “Answer,” and ask that if the same be competent, material and relevant, due proof thereof be made.

*Thirty-fifth.*—In answer to the offer and tender of the respondent, Conrad Morris Braker, as set forth in paragraph “Sixty-fifth” of said “Answer,” complainants aver that the said Conrad Morris Braker is now falsely and fraudulently pretending and alleging that the absolute sale and assignment of his interest in the estate of his father, Conrad Braker, Jr., averred to have been sold and assigned by him to Frank L. Rabe, as set forth in paragraph numbered “Ninth” in the Bill of Complaint, was in effect security for a loan, and is endeavoring to secure the aid of this Court in forcing complainants to deliver up this assignment for cancellation upon repayment of the purchase price of a part of the purchase price thereof.

*Thirty-sixth.*—Neither admit nor deny the allegations contained in the paragraph marked “Sixty-sixth” of said “Answer,” and ask that if the same be relevant, competent and material, due proof thereof be made.

*Thirty-seventh.*—Deny the allegations contained in the paragraph marked “Sixty-seventh” of said “Answer.”

*Thirty-eighth.*—Complainants neither admit nor deny the matters alleged in the paragraph marked “Sixty-eighth,” in said “Answer,” and ask that if the same be competent, relevant and material, due proof thereof be made; except that complainants deny that the assignment referred to and described in paragraph “Tenth” of the Bill of Complaint and the negotiations, engagements, conferences and conference had in Pennsylvania were in any respect contrary to the laws of that State or of the State of New York.

*Thirty-ninth.*—Complainants further aver and show that the “Answer” of the said Conrad Morris Braker attempts to set up a counter-claim or cross-bill, and asks as affirmative relief that (a) the said conveyance and assignment by the said Conrad Morris Braker to the New York Finance Company, dated April 18th, 1901, be annulled and cancelled; or (b) be reformed into a mortgage.

Complainants show to your Honorable Court that it is provided by Section 397 of the Code of Civil Procedure of the State of New York that a cause of action upon which an action cannot be maintained under the Statute of Limitations of the State of New York cannot be effectually interposed as a defence or counter-claim; and that the counter-claims or defences attempted to be set up by the said Conrad Morris Braker in his said Answer constitute alleged causes of action which are barred by the Statute of Limitations of the State of New York as appears from the following facts.

Insofar as the counter-claim or defence or prayer for affirmative relief is based on the ground of the

penalty provided by the laws of the State of New York for usury, the said Conrad Morris Braker is barred by the Third paragraph of Section 383 and by Section 388 of the Code of Civil Procedure in the State of New York because the aforesaid conveyance and assignment and the transaction relating thereto were concluded on or about April 18th, 1901, a period of more than three years and a period of more than ten years prior to the institution of this action, and prior to the filing of the "Answer" or Cross-bill herein; and any and all right of action vested in Conrad Morris Braker to obtain the cancellation of said conveyance or assignment on the ground of usury, even if there ever was any such right of action, which complainants deny, accrued on or about the 18th day of April, 1901, and that no action has ever been begun by the said Conrad Morris Braker to cancel or to have declared void the said assignment.

Insofar as the counter-claim or defence or prayer for affirmative relief is based on the ground that the sale of the legacy described in the Bill of Complaint was in reality a mortgage, the said Conrad Morris Braker is barred by the Statute of Limitations of the State of New York, contained in Title II of Chapter 4 of the Code of Civil Procedure of the State of New York, and particularly by Section 388 thereof, because the aforesaid conveyance and assignment and the transaction relating thereto were concluded on or about April, 1901, a period of more than ten years prior to the institution of this suit, and prior to the filing of the Answer or Cross-bill herein; and any and all right of action vested in Conrad Morris Braker to reform the said conveyance or assignment on the ground that the same was in reality a mortgage, even if there ever was any such right of action, which the complainants deny,



accrued on or about the 18th day of April, 1901, and that no action has ever been begun by the said Conrad Morris Braker to reform the said instrument, or to have the same declared operative as a mortgage.

*Fortieth.*—Deny the allegations contained in the paragraph marked “Sixty-ninth” of said “Answer.”

*Forty-first.*—Deny the allegations of the paragraph marked “Seventieth” of the said “Answer.”

*Forty-second.*—Deny the allegations contained in the paragraph marked “Seventy-first” in said “Answer.”

WHEREFORE, complainants pray that insofar as the said “Answer” asks for affirmative relief, the same may be dismissed, and that the relief prayed for in the Bill heretofore filed in this cause be granted to complainants.

JOHN A. S. BROWN,

FRANK E. SCHERMERHORN,

*As Trustee for Clara Schermerhorn,  
under the Last Will and Testament of  
Thomas Cunningham, deceased,*

*By their Solicitor:*

FREDRIC W. FROST,

60 Wall Street,

Borough of Manhattan,

New York City, N. Y.

**NOTICE OF MOTION OF DEFENDANT BRAKER  
FOR DISMISSAL OF BILL.**

(Filed March 27th, 1914.)

Sir:

PLEASE TAKE NOTICE, that upon all the pleadings and proceedings had herein, I shall move this Court before the Judge assigned to hear motions on Friday, the 27th day of March, 1914, at the Post Office Building, Borough of Manhattan, City of New York, at 10.30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order dismissing the bill of complaint herein, with costs. Dated, March 21, 1914.

Yours, etc.,

SAFFORD A. CRUMMEY,  
*Solicitor for Respondent, Conrad  
Morris Braker.*

To:

FREDRIC W. FROST,  
*Solicitor for Complainants.*

---

**NOTICE OF MOTION OF DEFENDANT  
FLETCHER AS TESTAMENTARY TRUSTEE  
FOR DECRETAL ORDER OF DISMISSAL.**

(Filed March 27th, 1914.)

Sir:

You will please take notice that upon the bill of complaint and the answer herein, a motion will be made before one of the justices of this court, at a term of this court for the hearing of motions, to be held at the court room thereof, No. 66, U. S. General Post Office Building (or such other room as may be designated),

in the City of New York, Borough of Manhattan, at 10.30 A. M. on the 27th day of March, 1914, or as soon thereafter as counsel may be heard for a decretal order dismissing this suit with costs against the plaintiffs, on the ground that this court has not cognizance of the suit, or for such other order in the premises as may be just.

Dated, March 21, 1914.

Yours, etc.,

WILLIAM P. S. MELVIN,

*Atty. for Deft. A. B. Fletcher,*

165 Broadway, New York City, N. Y.

To:

FREDRIC W. FROST, Esq.,

*Atty. for Plffs.*

**ORDER DISMISSING SUIT.**

(Filed March 27, 1914.)

At a Stated Term of the District Court of the United States for the Southern District of New York, held at the General Post-Office Building, in the City and County of New York, on the 27th day of March, 1914.

Present: HON. E. HENRY LACOMBE,

*Judge.*

JOHN A. S. BROWN, a Citizen of the State of Pennsylvania, and FRANK E. SCHERMERHORN, as Trustee for Clara Schermerhorn, under the Last Will and Testament of Thomas Cunningham, Deceased, and a Citizen of the State of Pennsylvania,

Plaintiffs,

against

AUSTIN B. FLETCHER, as Testamentary Trustee of Conrad Morris Braker, under the Last Will and Testament of Conrad Braker, Jr., Deceased, and a Citizen of the State of New York, and CONRAD MORRIS BRAKER, a Citizen of the State of New York,

Defendants.

Equity 10.  
Page 112.

On reading and filing the notice of motion on behalf of the several defendants herein for the dismissal of the suit on the ground that this District Court has no cognizance of the same in that the suit could not be prosecuted in this court, if no assignment had been made, the court having considered the bill of complaint

and the answers herein on the part of said defendants.

Now, after hearing Mr. William P. S. Melvin, counsel for said defendant, Austin B. Fletcher, as testamentary trustee, etc., and Safford A. Crummey, counsel for defendant, Conrad Morris Braker, in favor of the motion, and Mr. Charles H. Burr, of counsel for the plaintiffs in opposition,

It is ORDERED that this suit be and the same is hereby dismissed with costs to each defendant to be taxed by the Clerk.

E. HENRY LACOMBE,

U. S. C. J.

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**PETITION FOR APPEAL AND ALLOWANCE.**

(Filed March 27th, 1914.)

*To the Honorable E. Henry Lacombe, District Judge  
of the Southern District of New York:*

Your petitioners, JOHN A. S. BROWN, and FRANK E. SCHERMERHORN, as Trustee for Clara Schermerhorn, under the Last Will and Testament of Thomas Cunningham, deceased, the above-named plaintiffs conceiving themselves aggrieved by the Decree made and entered on the 27 day of March, 1914, in the above entitled cause, by which said Decree the Bill filed by your petitioners was dismissed, on the sole ground that upon all the pleadings and proceedings had therein no jurisdiction of the District Court of the United States existed, and the suit was dismissed for that reason alone, do hereby appeal from said Order and Decree to the Supreme Court of the United States, as authorized by Section 238 of the Judicial Code, for the reasons specified in the Assignments of Error filed here-

with, and your petitioners pray that this appeal may be allowed, and that a Transcript of the Record, proceedings and papers upon which the said Decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 27 day of March, 1914.

FREDRIC W. FROST,  
*Attorney for Petitioners.*

The foregoing claim of appeal is allowed, Bond to be entered in the sum of \$250.00 to be approved by the Clerk.

Dated this 27 day of March, 1914.

E. HENRY LACOMBE,  
*United States Circuit Judge.*

---

**CERTIFICATE UNDER SECTION 238 OF THE  
JUDICIAL CODE.**

(Filed March 27th, 1914.)

In this cause I HEREBY CERTIFY that this appeal is granted solely, and that the order of dismissal of the Bill herein made is based solely on the ground that no jurisdiction of the District Court existed; that this question has been so determined by me on the ground that one of the defendants herein was the assignor of an interest in a decedent's estate, which interest was assigned to the complainants herein, and that the said defendant assignor is a citizen of the same State as his co-defendant.

This Certificate is made conformably to Section 238 of the Judicial Code.

E. HENRY LACOMBE,  
*United States Circuit Judge.*

**ASSIGNMENTS OF ERROR.**

(Filed March 27th, 1914.)

Your petitioners, JOHN A. S. BROWN, and FRANK E. SCHERMERHORN, as Trustee for Clara Schermerhorn, under the Last Will and Testament of Thomas Cunningham, deceased, pray an appeal from the final Decree of this Court to the Supreme Court of the United States, and assign for error:

*First.*—That the learned District Court erred in dismissing the Bill in the above-entitled cause for lack of jurisdiction.

*Second.*—The learned District Court erred in refusing to maintain jurisdiction of the above-entitled cause.

FREDRIC W. FROST,  
*Attorney for Petitioners.*

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**CITATION AND SERVICE.**

(Filed April 2nd, 1914.)

UNITED STATES OF AMERICA, ss.:

*To Austin B. Fletcher as Testamentary Trustee of Conrad Morris Braker, under the Last Will and Testament of Conrad Braker, Jr., deceased, and a citizen of the State of New York, and Conrad Morris Braker, a citizen of the State of New York,*  
GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at a Supreme Court of the United States to be holden at the City of Washington within 30 days from the date of this writ, pursuant to an appeal duly allowed by the District Court of the United States for the Southern District of New York, and filed in the Clerk's office of said Court on the 27th day of March, 1914, in a cause wherein John A. S. Brown, a citizen of

## 108 Stipulation as to Contents of Record on Appeal

the State of Pennsylvania, and Frank E. Schermerhorn as Trustee for Clara Schermerhorn, under the Last Will and Testament of Thomas Cunningham, deceased, and a citizen of the State of Pennsylvania are appellants, and Austin B. Fletcher as Testamentary Trustee of Conrad Morris Braker, under the Last Will and Testament of Conrad Braker, Jr., deceased, and a citizen of the State of New York, and Conrad Morris Braker, a citizen of the State of New York, are respondents, to show cause, if any there be, why the decree in said appeal mentioned should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness, HON. EDWARD DOUGLAS WHITE, Chief Justice of the United States this 31st day of March, in the year of our Lord, One thousand nine hundred and fourteen.

E. HENRY LACOMBE,  
*United States Circuit Judge.*

Due and proper service of the within citation is admitted this 2nd day of April, 1914.

WM. P. S. MELVIN,  
*Solicitor for Respdt. Fletcher as Trustee, etc.*

S. A. CRUMMEY,  
*Solicitor for Respdt. Braker.*

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## STIPULATION AS TO CONTENTS OF RECORD ON APPEAL.

(Filed April 16th, 1914)

IT IS HEREBY STIPULATED AND AGREED by and between the solicitors for the respective parties in the above entitled action that the portions of the record



### Stipulation as to Contents of Record on Appeal 109

which shall constitute the transcript of record on appeal in said action shall consist of the following only:

1. Bill of complaint.
2. Answer of defendant Austin B. Fletcher, as testamentary trustee.
3. Answer of defendant Conrad Morris Braker.
4. Complainants' Reply to the answer of Conrad Morris Braker.
5. Notice of motion on behalf of defendant Conrad Morris Braker for dismissal of the Bill of Complaint.
6. Notice of motion on behalf of defendant Austin B. Fletcher, as testamentary trustee, for decretal order of dismissal.
7. Order of March 27, 1914, dismissing suit.
8. Petition for appeal and allowance.
9. Certificate under Sec. 238 of Judicial Code.
10. Assignments of error.
11. Citation.
12. This stipulation.

And the Clerk of the United States District Court for the Southern District of New York is hereby directed to transmit only the above mentioned papers.

Dated New York, March 31, 1914.

FREDRIC W. FROST,  
*Solicitor for Complainants-Appellants.*

WILLIAM P. S. MELVIN,  
*Solicitor for Defendant-Respondent, Austin B. Fletcher, as Testamentary Trustee &c.*

SAFFORD A. CRUMMEY,  
*Solicitor for Defendant-Respondent, Conrad Morris Braker.*

**STIPULATION AS TO TRANSCRIPT OF RECORD  
AS PRINTED.**

(Filed April 18th, 1914.)

It is hereby stipulated and agreed by and between the Complainants-Appellants and the Defendants-Appellees in the above-entitled action, binding upon the parties to said action, that the foregoing printed copy is a true transcript of the record as agreed on by the parties to said action.

Dated, April 18th, 1914.

FREDRIC W. FROST,

*Attorney for Complainants-Appellants.*

WILLIAM P. S. MELVIN,

*Attorney for Defendant-Appellee,  
Austin B. Fletcher, as Testa-  
mentary Trustee, etc.*

SAFFORD A. CRUMMEY,

*Attorney for Defendant-Appellee,  
Conrad Morris Braker.*

**CLERK'S CERTIFICATE.**

UNITED STATES OF AMERICA, } ss.:  
SOUTHERN DISTRICT OF NEW YORK, }

JOHN A. S. BROWN, a Citizen of the State of Pennsylvania, and FRANK E. SCHERMERHORN, as Trustee for Clara Schermerhorn, under the Last Will and Testament of Thomas Cunningham, Deceased, and a Citizen of the State of Pennsylvania,

against

Equity-10  
No. 112.

AUSTIN B. FLETCHER, as Testamentary Trustee of Conrad Morris Braker, under the Last Will and Testament of Conrad Braker, Jr., Deceased, and a Citizen of the State of New York, and CONRAD MORRIS BRAKER, a Citizen of the State of New York.

I, ALEXANDER GILCHRIST, JR., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 18th day of  
(Seal) April in the year of our Lord one thousand nine hundred and fourteen and of the Independence of the said United States the one hundred and thirty-eighth.

ALEXANDER GILCHRIST, JR.,  
Clerk.

FILED

APR 30 1914

JAMES D. MAHER  
CLERKNo. ~~1027~~. 454

October Term, 1913.

IN THE

**Supreme Court of the United States**

**JOHN A. S. BROWN, and FRANK E. SCHERMERHORN, Trustee for Clara Schermerhorn, under the Last Will and Testament of Thomas Cunningham, Deceased,**

*Appellants,**VERSUS*

**AUSTIN B. FLETCHER, as Testamentary Trustee of Conrad Morris Braker, Under the Last Will and Testament of Conrad Braker, Jr., Deceased, and Conrad Morris Braker,**

*Appellees.*

**Appeal from the District Court of the United States  
for the Southern District of New York.**

**Motion to Advance and Brief on  
Behalf of Appellants.**

**FREDRIC W. FROST,  
CHARLES H. BURR,**

*Solicitors for Appellants.*

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IN THE  
Supreme Court of the United States,

---

JOHN A. S. BROWN AND FRANK E. SCHERMER-  
HORN, TRUSTEE FOR CLARA SCHERMER-  
HORN, UNDER THE LAST WILL AND TES-  
TAMENT OF THOMAS CUNNINGHAM, DE-  
CEASED,

*Appellants,*

*v.*

AUSTIN B. FLETCHER, AS TESTAMENTARY  
TRUSTEE OF CONRAD MORRIS BRAKER  
UNDER THE LAST WILL AND TESTAMENT  
OF CONRAD BRAKER, JR., DECEASED, AND  
CONRAD MORRIS BRAKER,

*Appellees.*

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APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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AND Now, this Eleventh of May, 1914, come the Ap-  
pellants, by their Counsel, and move the Court to ad-  
vance the above-entitled cause for hearing in the man-  
ner prescribed by Rule Six in accordance with Rule  
Thirty-two of this Court, because the only question in  
issue is the question of the jurisdiction of the Court  
below, and this Appeal is taken under Section 238 of  
the Judicial Code.

FREDRIC W. FROST,  
CHARLES H. BURR,  
*Solicitors for Appellants.*

## EASTERN DISTRICT OF PENNSYLVANIA, ss.:

RAYMOND C. KARGE, being duly sworn according to law, deposes and says; that on the eighteenth day of April, 1914, he deposited in the mail at the General Post Office, in the City of Philadelphia, Pennsylvania, a notice in the form attached hereto as Exhibit "A" and 5 copies of this Brief, addressed to Safford A. Crummey, Esq., 165 Broadway, New York City, N. Y., and to William P. S. Melvin, Esq., 165 Broadway, New York City, N. Y., the proper address of the counsel for the Appellees, duly postpaid, and that by due course of mail the said letters would reach the counsel for the Appellees on April twentieth, 1914.

RAYMOND C. KARGE.

Sworn to and subscribed before me, this Eighteenth day of April, 1914.

(Seal)

GEORGE KOPPENHOEFER, JR.

*Notary Public.*

My Commission Expires March 10th, 1917.

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EXHIBIT "A."

April 18, 1914.

Safford A. Crummey, Esq.,

and

William P. S. Melvin, Esq.,

165 Broadway,

New York City, N. Y.

Dear Sirs:—

Please take notice that on Monday, May 11th, 1914, we will present to the Supreme Court of the United States, in the matter of Brown, et al., v. Austin B. Fletcher, Testamentary Trustee, and Conrad Morris Braker, the motion, of which the enclosed is a copy. We also hand you herewith 5 copies of the brief which will be presented with the motion.

Yours respectfully,

FREDRIC W. FROST,

CHARLES H. BURR,

*Solicitors for Appellants.*



## STATEMENT OF THE CASE.

This case is before the Court on the sole question of the jurisdiction of the District Court under Section 238 of the Judicial Code.

The Bill in equity was filed by appellants against Austin B. Fletcher, as testamentary trustee of Conrad Morris Braker under the last Will and Testament of Conrad Braker, Jr., deceased, and against Conrad Morris Braker, defendants below, appellees.

The Bill (Record, pp. 1-13) showed that Conrad Morris Braker is entitled to receive a trust fund of Fifty Thousand Dollars under the Fifteenth clause of the Will of Conrad Braker, Jr., upon attaining fifty-five years of age, and that he had attained that age. That Conrad Morris Braker had sold to complainants one-half of seven-tenths of his interest under the said Fifteenth clause of the said Will, amounting to the sum of Seventeen Thousand Five Hundred Dollars, and that the title to the said sum of \$17,500 had become vested in complainants. The prayer of the Bill was that title to the said \$17,500 might be decreed to be in complainants, and defendant Austin B. Fletcher, Trustee, directed to pay over the said sum.

Complainants were citizens of the State of Pennsylvania, and Austin B. Fletcher, Trustee, and Conrad Morris Braker, were citizens of the State of New York at the time of the filing of the Bill. Conrad Morris Braker, a defendant, had been the assignor of the afore-said trust fund held by the other defendant as Trustee.

The learned District Judge dismissed the Bill, and his certificate (Record, p. 106) shows that the Bill was dismissed on the ground that Conrad Morris Braker, the defendant assignor, was a citizen of the same State as Austin B. Fletcher, the defendant Trustee.

From the decree dismissing the Bill this Appeal was taken in accordance with Section 238 of the Judicial Code.

## SPECIFICATIONS OF ERROR.

*First.*—That the learned District Court erred in dismissing the Bill in the above-entitled cause for lack of jurisdiction.

*Second.*—The learned District Court erred in refusing to maintain jurisdiction of the above-entitled cause.

## ARGUMENT.

The question presented is the simple one as to whether an interest in a trust fund is within the prohibitions of Section 24 (1st) of the Judicial Code.

It is submitted that the decisions of this Court show that an interest in a distributive share of an estate (*a fortiori* in a trust fund) is not within the statute, and that this principle has been recently determined by this Court in *Ingersoll v. Coram*, 211 U. S. 335.

The learned District Judge in the case of *Brown v. Fletcher*, now in this Court on certiorari, in overruling the demurrer of the defendant, held that "the interest of a *cestui que trust* in a sum of money held for him by a trustee" was not "what the statute meant by a 'chose in action'." He cited the case of *Croxall v. Shererd*, 5 Wall. 268, and concluded:

"In respect of personal property also the *cestui que trust* is entitled to possession of the *res* unless its nature precludes; in short, he is entitled at least on a case like this to all absolute interest save the legal title and actual possession. It would be a piece of doubtful pedantry, I think, in view of the usual meaning of the word 'chose in action' to apply it to a relation like that created by the fourteenth paragraph of the will."

In *Croxall v. Shererd*, 5 Wall. 268, the question was of the effect of a deed by a *cestui que trust*. This Court held:

"In the consideration of a court of equity, the *cestui que trust* is actually seized of the freehold. He may alien it, and any legal conveyance by him will have the same operation in equity upon the trust, as it would have had at law upon the legal estate" (at p. 281).

In *Deshler v. Dodge*, 16 How. 622, an action of replevin was brought by an assignee of a package of bank notes for their recovery. The Court held that such a suit was maintainable, and said:

“It is admitted the assignors in this case could not have maintained the suit in the federal courts. We are of opinion that this clause of the statute has no application to the case of a suit by the assignee of a chose in action to recover possession of the thing in specie, or damages for its wrongful caption or detention; and that it applies only to cases in which the suit is brought to recover the contents, or to enforce the contract contained in the instrument assigned” (at p. 630).

In *Bushnell v. Kennedy*, 9 Wall. 387, this Court discussed the question, and said:

“It has been decided, where the assignment was by will, that the restriction is not applicable to the representative of the decedent. And it has also been determined that the assignee of a chose in action may maintain a suit in the Circuit Court to recover possession of the specific thing, or damages for its wrongful caption or detention, though the court would have no jurisdiction of the suit if brought by the assignors. And it has recently been very strongly argued that the restriction applies only to contracts ‘which may be properly said to have contents’; ‘not mere naked rights of action founded on some wrongful act, some neglect of duty to which the law attaches damages, but rights of action founded on contracts which contain within themselves some promise or duty to be performed’” (at pp. 391 and 392).

In *Ambler v. Eppinger*, 137 U. S. 480, the suit was to recover the value of certain trees and logs alleged to have been converted. The suit was by an assignee. This Court sustained the jurisdiction and quoted with approval the above cited case of *Deshler*

v. Dodge, and Bushnell v. Kennedy, citing the latter case to hold "that the objection to the jurisdiction applied only to rights of action founded on contracts which contained within themselves some promise or duty to be performed" (at p. 483).

In *Bertha Zine & Mineral Company v. Vaughan*, 88 Fed. 566, a daughter of a decedent who had died intestate, assigned all of her interest in the estate, which by several mesne assignments passed to a corporation, the complainant. It filed its Bill against the administrator to recover the daughter's distributive share. The defendants were all citizens of Virginia, as well as the daughter, and the complainant was a New Jersey corporation.

Said the Court:

"It (the case under discussion) is not founded on a contract, nor brought to enforce a contract, but to enforce obligations incurred by administrators of an estate in their official capacity, by a failure to properly discharge their fiduciary duties. A non-resident assignee, bringing suit of this character, is entitled to have the same heard in this Court."

In *Ingersoll v. Coram*, the jurisdictional question involved is stated in the following language:

"It is charged that the right of the petitioner's intestate was derived from Root, and as he, it is further contended, could not have sued to establish his right to a share in the funds of the administrator, the latter and he being citizens of Montana, that the petitioner was equally disqualified to establish and recover Root's share of the property. The argument is that she is seeking to enforce a right of Root against the administrator arising on an equitable assignment by Root to her intestate, and she is therefore, it is said, suing to

recover as assignee of a chose in action upon which the assignor could not sue, because his citizenship is the same as that of the administrator in Massachusetts. Sec. 629, Rev. Stat." (at p. 361).

This Court then disposed of this jurisdictional objection in the following language:

"There are several answers to the contention. It is certainly very disputable if an interest in a distributive share of an estate is within the statute."

Certain additional reasons why jurisdiction existed were stated, which are not applicable to the case at bar; but it is evident that the precise question raised here was decided adversely to the appellees' contention by this Court.

In *Brown v. Fletcher*, 206 Fed. 461, now pending in this Court on certiorari, the Circuit Court of Appeals for the Second Circuit attempted to distinguish that case by saying:

"The complainants are not asserting a lien in their own right upon Braker's interest in the decedent's estate, as was the case in *Ingersoll v. Coram*, 211 U. S. 336, but are asserting Braker's title to the sum of \$10,000 to which they say they have succeeded."

In *Ingersoll v. Coram*, Root was a claimant to a share in the estate of Davis. Root entered into an agreement with Leyson, which amounted to an equitable assignment of his share as a fee for professional services. While it is true that in the syllabus the legal effect of the agreement made between Ingersoll and Root is referred to as constituting "a lien on the distributive share of an heir of defendant's intestate," all through the opinion the interest is referred to indifferently as a lien or an equitable assignment. Thus, at

page 361, in the opinion of the Court, quoted above, the right sought to be enforced by the administrator is spoken of as "arising on an equitable assignment by Root to her intestate"; and on page 368 the Court cites with approval in support of its finding, *Fourth Street Bank v. Yardley*, 165 U. S. 634, where it was held, under the particular circumstances of the case, that, contrary to the usual rule, the check there given operates as an appropriation or *equitable assignment* of a fund in the hands of the drawee. Mr. Chief Justice White, in delivering the opinion in that case, said:

"The deduction arises that as it cannot be reasonably conceived that the loan would have been made without the reference to an *assignment of the particular fund*, from which loan the hope of immediate payment was to be reasonably expected, the parties must have and did intend to create a particular appropriation charge or lien on the property, upon the faith of which they both dealt."

It is therefore submitted that this is a distinction without a difference, because the lien referred to in *Ingersoll v. Coram* was not a statutory lien or a lien arising simply out of the employment, but resulted from an instrument of writing, the legal effect of which was to constitute an equitable assignment by Root of a portion of his distributive share in the estate of Davis, just as Braker here assigned a portion of his distributive share to Brown and Schermerhorn; Root and the Trustee of Davis' Estate, being citizens of the same State, just as Braker and Fletcher, Trustee, are in the case at bar.

In conclusion, it is respectfully urged that the facts and the decision of this Court in *Ingersoll v. Coram* have foreclosed the question of jurisdiction as applicable to the case at bar. But if any distinction, unperceived by counsel for appellants, exists, it is submitted

that a suit against a trustee to establish a lien upon a distributive share in a decedent's estate can hardly be described as a suit to recover the contents of a chose in action, and that the trend and character of the decisions of this Court establish the principle that such suit is without the statute.

FREDRIC W. FROST,  
CHARLES H. BURR,  
*Solicitors for Appellants.*



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No. ~~1027~~

Office Supreme Court, U. S.  
FILED  
MAY 2 1914  
JAMES D. MAHER  
CLERK

No. 1027

October Term, 1913.

## Supreme Court of the United States

JOHN A. S. BROWN and FRANK E. SCHER-  
MERHORN, as Trustee for Clara Schermer-  
horn, under the Last Will and Testament of  
Thomas Cunningham, deceased,

Appellants,

vs.

AUSTIN B. FLETCHER, as Testamentary Trus-  
tee of Conrad Morris Braker, under the Last  
Will and Testament of Conrad Braker, Jr.,  
deceased, and CONRAD MORRIS BRAKER,  
Appellees.

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### BRIEF ON PART OF AUSTIN B. FLETCHER, AS TRUSTEE, &C., APPELLEE.

---

WILLIAM P. S. MELVIN,  
Solicitor for defendant  
Austin B. Fletcher, Appellee.

SAFFORD A. CRUMMEY,  
Solicitor for Defendant,  
Conrad Morris Braker.

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## Supreme Court of the United States

JOHN A. S. BROWN and FRANK  
E. SCHERMERHORN, as Trustee  
for Clara Schermerhorn, under  
the Last Will and Testament  
of Thomas Cunningham, de-  
ceased,

Appellants,

vs.

AUSTIN B. FLETCHER, as Testa-  
mentary Trustee of Conrad  
Morris Braker, under the Last  
Will and Testament of Conrad  
Braker, Jr., deceased, and  
CONRAD MORRIS BRAKER,

Appellees.

### Statement of the Case.

The bill of complaint shows that one Conrad Braker, Jr., by the fifteenth section or paragraph of his last Will and Testament established a trust

fund of \$50,000.00 in favor of Conrad Morris Braker, making Henry J. Braker the trustee thereof, and that under its terms he was directed to hold the same for the use of said *cestui que trust* until he should be fifty-five years of age, which would be on February 25, 1913. That the defendant, Austin B. Fletcher, on November 16, 1897, was appointed trustee by the Surrogates' Court of the County of New York to succeed Henry J. Braker and to execute the unexecuted trusts under the will, and that he now holds said trust fund (pages 2, 3, 4, 19).

The bill shows the following assignment to have been made by the *cestui que trust*, Conrad Morris Braker, of an interest in said trust fund, and also shows the *mesne* assignments thereof subsequently made and hereinafter enumerated until such interest was finally lodged in the hands of the complainants.

FIRST.—On April 18, 1901, the defendant and *cestui que trust*, Conrad Morris Braker, by deed of assignment transferred to one Frank L. Rabe seven-tenths of all his interest in said trust fund (page 4; Exhibit B., pages 22-27).

SECOND.—On October 1, 1901, Frank L. Rabe, by deed of assignment transferred to the New York Finance Company the interest he had acquired in said trust fund from Conrad Morris Braker (page 5; Ex. C., pages 28-31).

THIRD.—On December 19, 1906, the New York Finance Company by deed of assignment transferred to the complainants "all *moneys* coming to it under and by virtue of the aforementioned assignment, bearing date April 18, 1901, and duly assigned to the said New York Finance Company

\* \* \* and also all and every its estate, right, title and interest in and to such *moneys*, or any part thereof" (pages 6, 7; Ex. F., pages 39-42).

This deed of assignment was given as collateral for the purpose of securing the payment to the complainants of the promissory note of the New York Finance Company of even date therewith for \$10,000.00 payable on July 21, 1910 (pages 6, 7; Ex. "E." page 38). The note provided for a sale of the security in case of there being default in its payment, and such default having occurred, the collateral was sold at public sale and bought by one Charles Z. Wolff.

FOURTH.—On May 6, 1911, the complainants, by deed of assignment, transferred to Charles Z. Wolff "the certain part of all the right, title and interest of the New York Finance Company in and to the estate of Conrad Braker, Jr., deceased, to wit: a one-half of the certain estate, right, title and interest (and any and all moneys coming to the said New York Finance Company therefrom), assigned and transferred by Conrad Morris Braker to Frank L. Rabe by a certain instrument in writing, bearing date of April 18, 1901, and by the said Frank L. Rabe duly assigned and transferred to the said New York Finance Company by a certain instrument in writing, bearing the date of October 1st, 1901" (page 8; Ex. G., pages 42-49).

FIFTH.—On May 6, 1911, Charles Z. Wolff, by deed of assignment, reconveyed to complainants and by the same terms, all the interests mentioned in the deed immediately preceding (page 8; Ex. H., pages 49-55).

The prayer of the bill is that the complainants may be declared entitled to the immediate posses-

sion of the one-half of seven-tenths of the legacy of \$50,000.00 payable under the fifteenth paragraph of the will.

The defendants answered separately. The answer of the defendant Austin B. Fletcher shows by allegation XV (page 59), as a second defense, that upon the face of the bill, the District Court had not cognizance of the suit.

On March 27, 1914, a motion was made on the part of the defendant Austin B. Fletcher before one of the justices of the U. S. District Court for the Southern District of New York, upon the bill of complaint and the defendant's answer for a decretal order dismissing the suit on the ground that the Court had not cognizance thereof (page 102), and upon the hearing the suit was ordered dismissed (page 104).

## Argument.

The only question presented to the court on this appeal is whether the assignment on April 18, 1901, by the defendant Braker to one Rabe of his interest in a trust fund established for his benefit, was an assignment of a *chosc in action*, and, if so, whether the District Court for the Southern District of New York was precluded from taking cognizance of the suit brought against the trustee and *cestui que trust* to enforce the assignment because of the provision of the Judicial Code (Sec. 24, First Par.) prohibiting the entertainmēt of any such suit in the court unless it might have been prosecuted in the court if no assignment had been made,—it appearing by the bill that both the trustee and the *cestui que trust* are citizens of the State of New York.

The above section of the Judicial Code contains a law that has stood with but slight change since the time of its promulgation by the Judiciary Act of 1789. Its language almost continuously since that time has been against the cognizance by the trial court of a suit "*to recover the contents of any promissory note or other chosc in action*"; now its prohibitory terms are against the cognizance of any suit "*to recover upon any promissory note or other chosc in action.*"

I except, of course, when referring to the time since the original promulgation of the act the period during which the amendment of 1875 was in operation (until March 2, 1887), when the prohibition was

against the cognizance "of any suit founded on a contract in favor of an assignee unless a suit might have been prosecuted in such court to recover thereon if no assignment had been made, except in cases of promissory notes negotiable by the law merchant and bills of exchange."

The change made by the present law,—“to recover upon any promissory note or other chose in action,” would seem to greatly enlarge the jurisdiction of the District Court, but, be this as it may, it does not affect this present controversy, for whether the law has reference to the contents of a *chose in action*, or simply to a *chose in action*, it is plain that in either case the Court can take no cognizance of this action. There is no doubt it is founded on a *chose in action*; that there has been an assignment of it and that by reason of the assignor's citizenship, the lower Court could not take cognizance.

Chief Justice Marshall said in *Sere vs. Pitot* (6 Cranch, 333), as to the term “other chose in action,” that it was broad enough to comprehend either those who could sue for legal or those who could sue by virtue of *equitable* assignments, and that the word “contents” was too ambiguous in its import to restrain that general term,—i. e. *chose in action*. The contents of a note, he said, are “the sum it shows to be due.”

In *Shoecraft vs. Bloxham* (124 U. S., 730; 31 L. ed., 574), the Court said:

“the contents of any promissory note, or other ‘chose in action,’ were designed to embrace the rights the instrument conferred which were capable of enforcement by suit. They were not happily chosen to convey the



meaning, but they have received a construction substantially to that purport in repeated decisions of this Court."

In *Corbin vs. Black Hawk Co.* (105 U. S., 659; 26 L. ed., 1136), which was a suit for the specific performance of contract for the purchase of land, Judge Blatchford said that such a suit must be regarded as one to recover the contents of a contract as a *chose in action*, and so not maintainable by an assignee if it could not have been prosecuted had no assignment been made. And he said that *equitable as well as legal assignments are included*. He said:

"The contents of a contract as a *chose in action* in the sense of Sec. 629 are the rights created by it in favor of the party in whose behalf stipulations are made in it which he has a right to enforce in a suit founded on the contract; and a suit to enforce such stipulations is a suit to recover such contents. The promise to pay money contained in a promissory note is all that there is of the note. A suit to enforce the payment of the money is a suit to recover the contents of the note, because there is nothing contained in the note but the promise."

This Court has itself given us a definition of what is a *chose in action*. In *Sheldon vs. Sill*, 49 U. S., 441; 12 L. ed., 1147, 1151, Judge Grier says:

"The term '*chose in action*' is one of comprehensive import. It includes all the infinite varieties of contracts, covenants and

promises which confer on one party a right to recover a personal chattel or a sum of money by action."

In *Bushnell vs. Kennedy*, 9 Wall., 387; L. ed., 738, Chief Justice Chase says, regarding the term "chose in action," that

"under that comprehensive description are included all debts and all claims for damages for breach of contract, or for torts connected with contract."

As used in the statute, there are no accompanying expressions whatever delimiting the breadth of the term "*chose in action*." We submit that Congress in framing the law did not design to lessen, or qualify, or restrict the significance of those words; on the contrary, their purpose was not to minimize, but to adopt a word of great scope, and the great aim of the statute was to prevent, as far as possible, the entertainment of any suits in the Federal Courts, other than those strictly arising between citizens of different states, apprehending that unless such care were taken, the courts would be overborne by the volume of suits cunningly brought before them by force of assignments more specious than real. The legislators were concerned that the jurisdiction of the Court should be such as to bar out all others than genuine assignments between citizens of different states.

*Bushnell vs. Kennedy*, 76 U. S., 387; 19 L. ed., 738.

Under the head "*chose*,"—"choses in action," Bouvier in his Law Dictionary, gives us as definition—

"Personal things, of which the owner has not the possession, but merely a right of action for their possession."

And he refers to 2 Blackstone Comm., 389, 397.

In Blackstone we read :

"Property in chattels personal may be either in possession, which is where a man hath not only the right to enjoy but hath the actual enjoyment of the thing; or else, it is in action where a man hath only a bare right without any occupation or enjoyment."

Book 2, 389.

Again he says :

"We will proceed next to take a short view of the nature of property *in action*, or such where a man hath not the occupation but merely a bare right to occupy the thing in question the possession whereof may, however, be recovered by a suit or action at law; from whence the thing so recoverable is called a thing or *chose in action*."

Book 2, 397.

A chose in action is said to be a thing not in occupation or enjoyment, but merely a bare right to be recovered by an action, hence its name.

U. S. vs. Moulton, 27 Fed. Cas., 11, 12.

An assignment of an interest in a testamentary trust fund is characterized as an assignment of a *chose in action*.

Mercantile Trust Co. vs. Gubernat, 143  
N. Y. App. Div., 308.

A *chose in action*, or a thing in action, is a term used in contradistinction to a chose, or thing, in possession.

Ayres vs. West R. R. Co., 48 Barb., 135.

A *chose in action* includes all rights to personal property not in possession, which may be enforced by action.

Gillett vs. Fairchild, 4 Den., 80.

"It is a right of proceeding in a court of law to procure the payment of a sum of money. The term is used in contradistinction to choses in possession, which were chattels of which one is in possession or control, such as corn, wheat, books and the like.

One view has restricted the term to rights of action for money arising under contract, but while it comprehends these, whatever the contract, it is undoubtedly of much broader significance, and includes the right to recover pecuniary damages for a wrong afflicted either upon the person or property."

Citing Gillett vs. Fairchild, *supra*;  
McKee vs. Judd, 12 N. Y., 622; Wms.  
Pers. Prop., 4;  
3 Am. & Eng. Encyc. Sub. Tit. "Choses  
in action," 236.

The right to sue for a trust fund misapplied by the trustee is an *equitable chose in action* (id.).

A *chose in action* is defined to be "the interest in a contract which in case of non-performance can only be reduced into beneficial enjoyment by an action or suit."

Haskell vs. Blair, 57 Mass., 534, 536.

A life insurance policy has been held to be a chose in action,

Prudential Life Ins. Co. vs. Hann, 21 Ind. App., 525, 529,

even before the death of the insured.

Steele vs. Gatlin, 115 Ga., 929.

Pertinent, too, is the opinion of the Circuit Court of Appeals for the Second District in *Brown vs. Fletcher* (206 Fed. Rep., 461), a case very similar in its character to that now before the Court. It was a suit between the same complainants and this defendant-trustee to recover on the assignment made by the same *cestui que trust* of another trust fund created under the same will. In it the objection was raised, as now, to the Court's jurisdiction. Judge Learned Hand of the U. S. District Court in overruling the demurrer to the jurisdiction conceded by his opinion that upon the question whether the interest of the *cestui que trust* in the sum of money held for him by the trustee was or was not a *chose in action* under Sec. 24 of the Judiciary Act, such was no doubt the case in "strict legal theory," but he said that he did not think the *cestui que trust's* "interest is what the statute meant by a *chose in action*." The cause went to hearing resulting in a decision on the merits in favor of the defendant. An appeal

was taken to the Circuit Court of Appeals, and again it was objected by the defendant that the lower court did not have jurisdiction, and the Appellate Court dismissed the suit upon that and other grounds.

The cause is now pending in this court on writ of certiorari.

The Circuit Court of Appeals says with reference to the assignment:

"This is clearly a *chose in action*, that is a claim not in possession, but which must be enforced by and against the trustee. *Sheldon vs. Sill*, 49 U. S., 441. As their assignors could not maintain an action in the District Court, the complainants cannot."

The endeavor is made to show that the ruling of the Court in *Ingersoll vs. Coram* (211 U. S., 335; 53 L. ed., 208), is applicable to the present case, but the circumstances are totally different. In that case a bargain was made for the employment of the legal services of Col. "Bob" Ingersoll, and his payment was to be made out of the amount that might be secured thereby. The matter involved the setting aside of the last will of Andrew J. Davis, a very wealthy man, and Ingersoll was successful in bringing about a compromise, and it was claimed that an equitable lien attached to the distributive share of the contestants, and that the suit by Ingersoll's widow and administratrix to have the Court declare and foreclose the lien on the distributive share was, because it was based on

the contract of employment, a suit within the statute governing Federal jurisdiction of suits by assignees of *choses in action*. Justice McKenna said it was certainly very disputable if an interest in a distributive share of an estate is within the statute, and the inference is now begged that this Court will look upon the assignment made by Conrad Morris Braker of his interest in the trust fund held for his benefit by Austin B. Fletcher growing out of the estate of Conrad Braker, Jr., as an interest in a distributive share of an estate. But it is sufficient answer to say that the estate of Conrad Braker, Jr., has been long since distributed; that the executors thereof paid into the hands of the trustee the entire trust fund established by the will of the decedent, and that no person other than the *cestui que trust* or his assignees have, so far as relates to the fund any concern in its management. It is an interest capable of being assigned, and the assignees now, by their bill of complaint, ask that the Court will decree the payment over to them by the trustee of the assignee's part of the fund.

The assignment is of a *chose in action*, and the citizenship of the assignor precludes the lower Court from taking cognizance of the suit.

THE CASES CITED BY APPELLANTS IN THEIR BRIEF (DESCHLER VS. DODGE; BUSHNELL VS. KENNEDY; AMBLER VS. EPPINGER; BERTHA ZINC & MINERAL CO. VS. VAUGHAN) HAVE NO APPLICATION WHATEVER TO THE CAUSE BEFORE THE COURT.

Each of these cases have to do with tortious causes of action assigned over to suitors which

were declared to be not within the statute. *Deschler vs. Dodge* was an action in replevin; *Bushnell vs. Kennedy* was for damages because of the loss of money which seems to have been wrongfully obtained from the possession of an agent entrusted with it; *Ambler vs. Eppinger* (137 U. S., 480; 34 L. ed., 765) was an action for trespass and damages; *Bertha Zinc and Mineral Co. vs. Vaughan* was an action against administrators and their sureties for a *decrastavit*. Justice Field, in the case of *Ambler vs. Eppinger*, showed that the exception in the statute did not extend to suits growing out of some tortious act.

See to same effect

Mex. Nat. R. Co. vs. Davidson, 157 U. S.,  
201; 39 L. e. 672-674.

Respectfully submitted,

WILLIAM P. S. MELVIN,  
Solicitor for Defendant  
Austin B. Fletcher, as Trustee.

STAFFORD A. CRUMMEY,  
Solicitor for Defendant  
Conrad Morris Braker.



## Supreme Court of the United States

JOHN A. S. BROWN and FRANK  
E. SCHERMERHORN, as trustee,  
under the Last Will and Testa-  
ment of Thomas Cunningham,  
deceased,

vs.

AUSTIN B. FLETCHER, as testa-  
mentary trustee of Conrad  
Morris Braker, under the Last  
Will and Testament of Conrad  
Braker, Jr., deceased, and  
CONRAD BRAKER.

No. 454.

### BRIEF ON PART OF APPELLEES.

#### Statement.

This is a suit in equity brought by the plaintiffs in the District Court of the United States for the Southern District of New York, to obtain a judgment that they be declared entitled to the immediate possession of one-half of seven-tenths of a legacy of \$50,000.00 in a trust established by a testator (Conrad Braker, Jr.), by the 15th para-

graph of his will in favor of *his son*, Conrad Morris Braker, who is one of the defendants, and that the Court order and direct the defendant, Austin B. Fletcher, as trustee of the trust under the will, to pay to the plaintiffs said one-half of seven-tenths of the legacy aforesaid, amounting to the sum of \$17,500.00, and that the Court decree that said Conrad Morris Braker has no title or right in said one-half of seven-tenths of the legacy (pages 11-12 of Record).

The trustee named in the will of testator having resigned, the defendant, Austin B. Fletcher, was appointed in his stead by the Surrogates' Court of the County of New York to execute the unexecuted trusts under the will, one of which (so far as relates to this action) was the administration of the trusts created under its 15th and 16th provisions.

This will was admitted to probate on the 13th day of September, 1890, and under its 15th provision the testator established a trust fund of \$50,000.00 of which his son, the *cestui que trust*, was to have the use until he should attain the age of fifty-five years, which event would occur on the 25th day of February, 1913,—and thereupon should receive the principal of the trust fund.

Under the 16th provision of the will a trust fund was established of the rest, residue and remainder of testator's property. This also was in favor of the same son and under it he was likewise to have the use thereof until he should attain the age of fifty-five years, when he should be paid the principal.

On the 18th day of April, 1901, the *cestui que trust*, Conrad Morris Braker, made an assignment in writing to one Frank L. Rabe of seven-tenths of

all his right, title and interest to the \$50,000.00 trust fund under the 15th clause of the will, the intention being, as expressed in the assignment, that the assignee should receive the net sum of \$35,000.00 when and as soon as the same should grow due and payable, and that should the trust fund by any cause be thereafter diminished so that the assignee should not receive the sum of \$35,000 then, in such case, there was transferred to the assignee by the *cestui que trust* so much of his estate under the "Fifteenth" and "Sixteenth" clauses of the will as should make up the deficiency.

The deed of assignment was executed with formality under seal, witnessed and acknowledged and purports to have been recorded in the Registers Office of the County of New York and in the Surrogates' office of the County of New York (Exhibit "B," pages 22-28).

A few months after the execution of this assignment, Rabe, the assignee, made an assignment (October 1, 1901; Ex. "C," page 28) over to the New York Finance Company, a New York corporation, of all his estate, right and title in the interest of Conrad Morris Braker under clause "Fourteenth" and "Fifteenth" of said will.

(Note. It is unnecessary to refer in this statement to the interest that passed under the *fourteenth* clause of the will. Suffice it to say such interest is involved in another suit pending in this court under a writ of certiorari.)

Afterwards, on January 4, 1907, the assignee, Frank L. Rabe, made a supplemental assignment to said Finance Company for the purpose of rectifying a mistake in the preceding assignment whereby there had been an omission to include the interest

of Rabe under the "Sixteenth" clause of said will.

In the interval between the execution of these assignments by Rabe to the Finance Company, more particularly on December 14, 1906, the New York Finance Company gave its promissory note to the plaintiffs for \$10,000.00 payable July 21, 1910, and by its terms, as collateral security for its payment, gave in pledge an assignment to them a certain part of all its right, title and interest in the estate of Conrad Braker, Jr. The note and assignment are Exhibits "E" and "F" of the Bill (pages 38-42). The assignment in more particular terms transferred to them one-half part of all *monies* coming to the assignor under the said assignment made to Rabe by Conrad Morris Braker on April 18, 1901, which in turn had been transferred by Rabe to the New York Finance Company.

The promissory note not having been paid, the plaintiffs caused the said collateral to be sold at public auction on May 3rd, 1911, and the same was bought by one Charles Z. Wolff to whom a deed of assignment was given by the plaintiffs on May 6, 1911 (Ex. "G," pages 42-48), and the transferee, Wolff, by his deed made on the same day reassigned the same to the plaintiffs (Ex. "H," pages 49-55). The recitals in each of said last named deeds are the same, but the deed by Wolff recites the transfer to him of all the right, title and interest of the New York Finance Company in the estate of Conrad Braker, Jr., and it transfers to the plaintiffs all the estate, right, title and interest which he, Wolff, had or might be entitled to receive in, to or from the estate of Conrad Braker, Jr.

On the day when Conrad Morris Braker became fifty-five years of age (February 25, 1913), this suit was instituted by the plaintiffs.

The defendants answered separately, and each plead that upon the face of the bill the District Court had not cognizance of the suit (pages 59, 89).

On March 27, 1914, motions were made in the District Court on the part of each defendant for a decretal order dismissing the suit with costs on the ground that the Court had not cognizance of the same (page 102).

The motions to dismiss the suit were granted, and thereupon an order was made by the Court dismissing the suit with costs on the ground that the District Court had no cognizance of the same, inasmuch as the suit could not be prosecuted in the court if no assignment had been made (page 104).

The plaintiffs then petitioned for an allowance of an appeal to the Supreme Court of the United States under the provisions of Section 238 of the Judicial Code, which being allowed, the Court certified that the dismissal of the bill was made solely on the ground that no jurisdiction of the District Court existed; that the determination was on the ground that one of the defendants was the assignor of an interest in a decedent estate which interest was assigned to the complainants, and that the defendant assignor is a citizen of the same state as his co-defendant (pages 105-108).

### **Argument.**

The bill of complaint of the plaintiffs herein was dismissed by the District Court on the ground solely that this was a suit to recover upon a chose in action in favor of an assignee, and that the suit could not be prosecuted in such court to recover

upon the chose in action if no assignment had been made.

The suit is brought by persons who by *mesne* assignments from the original assignee, have become possessed of a part of the vested interest of a *cestui que trust* in a testamentary trust fund held by his trustee for his benefit until he should attain the age of fifty-five years, and which was then to be paid over to him by the trustee. The trustee is the defendant, Austin B. Fletcher. The *cestui que trust* is the defendant, Conrad Morris Braker, and the bill of complaint shows that both trustee and *cestui que trust* are citizens of the State of New York.

#### POINT I.

**The present statute fixing the jurisdiction of District Courts is unqualified in its expression that they cannot take cognizance of a suit to recover upon a CHOSE IN ACTION in favor of any assignee unless such suit might have been prosecuted in the court if no assignment had been made.**

The following is the text of the Judicial Code so far as it affects the question now before the court:

"No district court shall have cognizance of any suit (except upon foreign bills of exchange) to recover upon any promissory note or other chose in action in favor of any as-

signee, or of any subsequent holder if such instrument be payable to bearer and be not made by any corporation, unless such suit might have been prosecuted in such court to recover upon said note or other chose in action if no assignment had been made."

Sec. 24 Judicial Code, First Subdiv.

This law limiting the jurisdiction of the lower courts was first announced by Congress in Section 11 of the Judiciary Act of 1789 (Stat. at Large 78, Ch. 20) as follows:

"Nor shall any District or Circuit Court have cognizance of any suit to recover the contents of any promissory note or other chose in action in favor of an assignee unless such suit might have been prosecuted in such court to recover the said contents if no assignment had been made."

This statute was reenacted in Section 629 of the Revised Statutes with slight modification, as follows:

"The Circuit Courts shall have original jurisdiction as follows:

FIRST.—Of all suits of a civil nature at common law or in equity \* \* \* Provided that no Circuit Court shall have cognizance of any suit to recover the contents of any promissory note or other chose of action, in favor of an assignee, unless a suit might have been prosecuted in such court to recover the said contents, if no assignment had been made, except in cases of foreign bills of exchange."

Thus the law remained until 1875 when it was changed to read as follows:

"Nor shall any Circuit or District Court have cognizance of any suit founded on a contract in favor of an assignee unless a suit might have been prosecuted in such court to recover thereon if no assignment had been made, except in cases of promissory notes, negotiable by the law merchant and bills of exchange."

But the Act of 1875 was amended and the law restored to practically the form in which it originally stood in 1789. This last amendment was made by the Acts of March 3, 1887, and of August 13, 1888, and is as follows:

"Nor shall any Circuit or District Court have cognizance of any suit except upon foreign bills of exchange, to recover the contents of any promissory note, or other chose in action, in favor of any assignee or of any subsequent holder, if such instrument be payable to bearer, and be not made by any corporation, unless such suit might have been prosecuted in such court to recover the said contents if no assignment or transfer had been made."

It will be observed that the changes made in the law by the Judicial Code are rather in its structure than in its substance, except in one particular which does not so much affect the question before the Court, as it serves perhaps to indicate that by the omission of the word "*contents*" (a word that had appeared in the law from the very



beginning), Congress purposed to remove the limitations that by its use in aid of construction the Court had placed upon the term "*chose in action*." The limitation being removed it would seem that the broadest interpretation to the term should now be given, with the result that many more cases are now excluded from cognizance by the District Court.

Chief Justice Marshall said in 1808, in *Sire vs. Pitot* (6 Cr., 335), commenting on the term "*chose in action*," that the word "*contents*" was too ambiguous in its import to restrain that general term; nevertheless, it will appear that the Court, in its subsequent history, has been controlled in its decisions by the association of the word "*contents*" with that term.

Thus in *Corbin vs. Black Hawk Co.* (105 U. S., 659, 26 l. e., 1136), a cause which originated in 1874, Judge Blatchford said:

"The *contents* of a contract as a *chose in action*, in the sense of Sec. 629 are the rights created by it in favor of a party in whose behalf stipulations are made in it which he has a right to enforce in a suit founded on the contract; and a suit to enforce such stipulations is a suit to recover such *contents*. The promise to pay money contained in a promissory note is all that there is of the note. A suit to enforce the payment of the money is a suit to recover the *contents* of the note, because there is nothing contained in the note but the promise."

Again, it was held in *Shoecraft vs. Bloxham* (124 U. S., 730, 31 l. e., 574) that a suit to enforce the

performance of a contract is a suit to recover *the contents of a chose in action*. The Court said:

"The terms used 'the contents of any promissory note or other chose in action' were designed to embrace the rights the instrument conferred which were capable of enforcement by suit. They were not happily chosen to convey this meaning but they have received a construction substantially to that purport in repeated decisions of this court. They were so construed in the recent case of *Corbin vs. Black Hawk County*, 105 U. S., 659 (26:1136) where the subject is fully considered and the decisions cited."

Reference has been made by the appellants to the cases of *Deshler vs. Dodge*, 1853, (16 How., 622); *Bushnell vs. Kennedy*, 1870, (9 Wall., 387); *Ambler vs. Eppinger* (137 U. S., 480); and *Bertha Zinc and Mineral Company vs. Vaughan* (88 Fed., 566) as in some way sustaining their contention here that the assignment is such a *chose in action* as may be maintained in the District Court notwithstanding the fact of the citizenship of the original assignor being the same as that of the trustee. But an inspection of all these cases will show that they were all founded on assignments of tortious claims, and the courts held that such claims were not within the restrictions of the statute because they did not have "*contents*"—the plain inference being that without such word the court would have given the term "*chose in action*" its full import and denied the jurisdiction of the lower court.

Judge Nelson said in *Deshler vs. Dodge* (*supra*):

"We are of the opinion that this clause of the statute has no application to the case of a suit by the assignee of a chose in action to recover possession of the thing in specie, or damages for its wrongful caption or detention, and that it only applies to cases in which the suit is brought to recover the *contents*, or to enforce the contract contained in the instrument assigned."

## POINT II.

**The Supreme Court early defined what is a "chose in action," as the term is used in the statute, and the term has a familiar meaning in our law literature and decisions.**

The Supreme Court has itself given us a definition of what is a *chose in action*. In *Sheldon vs. Sill*, (49 U. S., 441, 12 L. e., 1147, 1151), Judge Grier says:

"The term 'chose in action' is one of comprehensive import. It includes all the infinite varieties of contracts, covenants and promises which confer on one party a right to recover a personal chattel or a sum of money by action."

In *Bushnell vs. Kennedy* (9 Wall., 387, 19 L. e., 738) Chief Justice Chase says, regarding the term:

"Under that comprehensive description are included all debts and all claims for damages for breach of contract, or for torts connected with contracts."

A *chose in action* is said to be a thing not in occupation or enjoyment, but merely a bare right to be recovered by an action; hence its name.

U. S. vs. Moulton, 27 Fed. Cas., 11, 12.

An assignment of an interest in a testamentary trust fund is characterized as an assignment of a *chose in action*.

Mercantile Trust Co. vs. Gumbert, 143 N. Y. App. Div., 308.

Under the head "Chose"—"Choses in action," Bouvier in his law dictionary gives as definition:

"Personal things of which the owner has not the possession, but merely a right of action for their possession."

And he refers to 2 Blacks. Comm., 389, 397. In Blackstone we read:

"Property in chattels personal may be either in possession, which is where a man hath not only the right to enjoy but hath the actual enjoyment of the thing; or else it is in action where a man hath only a bare right without any occupation or enjoyment."

Book 2, 389.

Again he says:

"We will proceed next to take a short view of the nature of property in *action*, or such

where a man hath not the occupation, but merely a bare right to occupy the thing in question, the possession whereof may, however, be recovered by a suit or action at law; from whence the thing so recoverable is called a thing or *chose in action*."

Book 2, 397.

A chose in action, or a thing in action is a term used in contradistinction to a chose, or thing in possession.

Ayers vs. West R. R. Co., 48 Barb., 135.

A *chose in action* includes all rights to personal property not in possession, which may be enforced by action.

Gillett vs. Fairchild, 4 Den., 80.

A *chose in action* is defined to be the interest in a contract which in case of non-performance can only be reduced into beneficial enjoyment by an action or suit.

Haskell vs. Blair, 57 Mass., 534, 536.

A life insurance policy has been held to be a chose in action,

Prudential Life Ins. Co. vs. Hann, 21 Ind. App., 525, 529,

even before the death of the insured.

Steele vs. Gablin, 115 Ga., 929.

"It is a right of proceeding in a court of law to procure the payment of a sum of money.

The term is used in contradistinction to choses in possession, which are chattels, of which one is in possession or control, such as corn, wheat, books and the like.

"One view has restricted the term to rights of action for money arising under contract, but while it comprehends these, whatever the contract, it is undoubtedly of much broader significance, and includes the right to recover pecuniary damages for a wrong inflicted either upon the person or property." Citing *Gillett vs. Fairchild*, *supra*; *McKee vs. Judd*, 12 N. Y., 622; *Williams Per. Prop.*, 4.

3 Am. & Eng. Ency., 1st ed. Sub Tit.  
"Choses in Action," 236.

Pertinent, too, is the opinion of the Circuit Court of Appeals in *Brown vs. Fletcher* (206 Fed. Rep., 461), a case very similar in its character to that now before the court. It is a suit between the same complainants and this defendant-trustee to recover upon the assignment made by the same *cestui que trust* of another trust fund created under the same will. In that case the objection was raised, as now, to the court's jurisdiction.

Judge Learned Hand of the U. S. District Court, in overruling the demurrer to the jurisdiction, conceded, in his opinion, upon the question whether the interest of the *cestui que trust* in the sum of money held for him by the trustee was a *chose in action* under Section 24 of the Judiciary Act, that such was, no doubt, the case in "strict legal theory," but he said that he did not think the *cestui que trust's* interest was what the statute meant by

a *chose in action*. The cause went to hearing resulting in a decision on the merits in favor of the defendant. An appeal was taken to the Circuit Court of Appeals, and again it was objected by the defendant that the lower court did not have jurisdiction, and the Appellate Court dismissed the suit upon that and other grounds.

The cause is now pending in this court upon a writ of certiorari.

The Circuit Court of Appeals said in the case (206 Fed. Rep., 461) with reference to the assignment :

"This is clearly a *chose in action*, that is, a claim not in possession but which must be enforced by an action against the trustee. *Sheldon vs. Sill* (49 U. S., 441). As their assignors could not maintain an action in the District Court, the complainants cannot"

### POINT III.

**Equitable assignments of CHOSSES IN ACTION, as well as legal assignments, are comprehended within the application of the statute.**

The assignment by Conrad Morris Braker, the *cestui que trust*, on April 18, 1901, of seven-tenths of his interest in the trust fund held by his trustee, Austin B. Fletcher, was an equitable assignment.

Chief Justice Marshall said in *Sire vs. Pitot* (6 Cranch, 333) :

"The words of the act are said to apply obviously to assignments made by the party

himself on an actual note, or other chose in action assignable by the proprietor thereof \* \* \* without doubt assignable paper being the chose in action most usually transferred was in the minds of the legislature when the law was framed; and the words of the provision are therefore best adapted to that class of assignments. But there is no reason to believe that the legislature was not equally disposed to except from the jurisdiction of the federal courts those who could sue in virtue of equitable assignments and those who could sue in virtue of legal assignments. The assignee of all the open accounts of a merchant might, under certain circumstances, be permitted to sue in equity in his own name, and there would be as much reason to exclude him from the federal courts as to exclude the same person when the assignee of a particular note."

The foregoing case was referred to in *Corbin vs. Black Hawk County* (105 U. S., 659, 26 l. e., 1136) as one by which the principle was settled that the statute intended to except suits in virtue of equitable assignments, as well as suits by virtue of legal assignments.

#### POINT IV.

**The assumption of the appellants that the opinion of the court in *Ingersoll vs. Coram* is determinative as to the jurisdictional question in this suit is erroneous.**

The endeavor is made to show that the expression of the Court in *Ingersoll vs. Coram* (211 U. S.,



335, 53 L. ed., 208) is adverse to the defendants' contention in the present case, but the circumstances are totally different. In that case a bargain was made by would-be contestants for the employment of the legal services of Col. "Bob" Ingersoll, and his payment was to be made out of the amount that might be secured thereby. The matter involved the setting aside of the last will of Andrew J. Davis, a very wealthy man, and as a result of the suit instituted Ingersoll was successful in bringing about a compromise, and it was claimed that an equitable lien attached to the distributive shares so secured for the contestants, and that the suit by Ingersoll's widow and administratrix to have the Court declare and foreclose such lien on the distributive shares was, because it was based on the contract of employment, a suit within the statute governing federal jurisdiction of suits by assignees of choses in action. Justice McKenna said it was certainly very disputable if an interest in a distributive share of an estate is within the statute, and the inference is now begged that this Court will look upon the assignment made by Conrad Morris Braker of his interest in the trust fund held for his benefit by Austin B. Fletcher growing out of the estate of Conrad Braker, Jr., as an interest in a distributive share of an estate.

But the testamentary trust fund held by the defendant, Austin B. Fletcher, is not the distributive share of an estate of a decedent. True, it is a part of the estate of the testator, Braker. He founded the trust fund, but long before the execution of the assignments the fund was severed from the testator's estate by the act of his executors paying it into the hands of the trustee for the benefit of the

*cestui que trust* named in the will, and, eventually it was paid into Mr. Fletcher's hands, as trustee, under order of the court (par. 4, 5, 6 of bill). Unquestionably the *cestui que trust* could dispose of his equitable interest in the principal of the trust fund while it was being administered, and with the same positiveness it may be asserted that the purchaser of such an interest could enforce its payment to him by the trustee when the day arrived for its payment. But such an interest by a *cestui que trust* in a trust fund is quite a different one from that of an heir-at-law or next of kin in the undistributed estate of his ancestor. The interest of a *cestui que trust* in a testamentary trust fund is positive and fixed, but that of an heir or next of kin in an estate in the hands of an administrator or executor may be very vague and uncertain, subject to the discovery and payments of claims of creditors and the expenses of administration, and in this view it might be a doubtful matter whether the rights of an heir or next of kin is a chose in action.

In our case the estate of Conrad Braker, Jr., has been long since distributed; the executors of the estate have paid into the hands of the testamentary trustee the entire trust fund established by the will of the decedent, and no person other than the *cestui que trust* or his assignees have, so far as relates to the fund, any concern in its management and distribution. It is an interest capable of being assigned, and the assignees now, by their bill of complaint, ask that the Court will decree the payment over to them by the trustees of the assignee's part of the fund.

The assignment is of a *chose in action*, and the citizenship of the assignor precludes the lower court from taking cognizance of the suit.

#### POINT V.

**The decretal order of the District Court of the United States for the Southern District of New York should be affirmed, with costs to the respective appellees, without prejudice to the right of the plaintiffs to bring any suit they may be advised in the proper court.**

WILLIAM P. S. MELVIN,  
Counsel for Appellee,  
Austin B. Fletcher, Trustee, etc.

SAFFORD A. CRUMMEY,  
Counsel for Appellee,  
Conrad Morris Braker.

FILED

MAY 18 1914

JAMES D. MAHER

CLERK

No. ~~1000~~ 454

October Term, 1913.

## Supreme Court of the United States

---

JOHN A. S. BROWN and FRANK E. SCHERMERHORN, as Trustee for Clara Schermerhorn, under the Last Will and Testament of Thomas Cunningham, deceased,

Appellants,

vs.

AUSTIN B. FLETCHER, as Testamentary Trustee of Conrad Morris Braker, under the Last Will and Testament of Conrad Braker, Jr., deceased, and CONRAD MORRIS BRAKER,

Appellees.

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### SUPPLEMENTAL BRIEF ON PART OF AUSTIN B. FLETCHER, AS TRUSTEE, &c.

---

WILLIAM P. S. MELVIN,  
Solicitor for Defendant  
Austin B. Fletcher, Appellee.

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## Supreme Court of the United States

JOHN A. S. BROWN and FRANK  
E. SCHERMERHORN, as Trustee  
for Clara Schermerhorn, under  
the Last Will and Testament  
of Thomas Cunningham, de-  
ceased,

Appellants,

VS.

AUSTIN B. FLETCHER, as Testa-  
mentary Trustee of Conrad  
Morris Braker, under the Last  
Will and Testament of Conrad  
Braker, Jr., deceased, and CON-  
RAD MORRIS BRAKER,

Appellees.

### SUPPLEMENTAL BRIEF.

Counsel for appellee, Austin B. Fletcher, as trustee, etc., has no objection to this motion to advance the cause.

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. ~~1000~~ 455

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THE PROVIDENT LIFE AND TRUST COMPANY  
AND CATHERINE STEWART WOOD, AS  
EXECUTORS UNDER THE LAST WILL AND  
TESTAMENT OF WILLIAM BREWSTER  
WOOD, DECEASED,

v.

AUSTIN B. FLETCHER, AS TESTAMENTARY TRUS-  
TEE OF CONRAD MORRIS BRAKER UNDER  
THE LAST WILL AND TESTAMENT OF CON-  
RAD BRAKER, JR., DECEASED, AND CONRAD  
MORRIS BRAKER.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK.

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FILED Apr 20, 1914.

24179



# Supreme Court of the United States.

OCTOBER TERM, 1913.

No. .

THE PROVIDENT LIFE AND TRUST COMPANY  
AND CATHERINE STEWART WOOD, AS  
EXECUTORS UNDER THE LAST WILL AND  
TESTAMENT OF WILLIAM BREWSTER  
WOOD, DECEASED,

vs.

AUSTIN B. FLETCHER, AS TESTAMENTARY  
TRUSTEE OF CONRAD MORRIS BRAKER  
UNDER THE LAST WILL AND TESTAMENT  
OF CONRAD BRAKER, JR., DECEASED, AND  
CONRAD MORRIS BRAKER.

APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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**BILL OF COMPLAINT.**  
(Filed February 25, 1913.)

IN THE  
District Court of the United States,  
FOR THE SOUTHERN DISTRICT OF NEW YORK.

---

THE PROVIDENT LIFE AND TRUST COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, and a citizen of the said State of Pennsylvania, and CATHERINE STEWART WOOD, a citizen of the State of Pennsylvania, as Executors under the last Will and Testament of William Brewster Wood, deceased, also of the City of Philadelphia, State of Pennsylvania, and a late citizen of the said State of Pennsylvania,

In Equity.  
No. 10-111.

versus

AUSTIN B. FLETCHER, as Testamentary Trustee of Conrad Morris Braker, under the Last Will and Testament of Conrad Braker, Jr., deceased, and a citizen of the State of New York, and CONRAD MORRIS BRAKER, a citizen of the State of New York.

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*To the Honorable the Judges of the District Court of  
the United States for the Southern District of New  
York:*

THE PROVIDENT LIFE AND TRUST COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, and a citizen

of the said State of Pennsylvania, and CATHERINE STEWART WOOD, a citizen of the State of Pennsylvania, as Executors under the Last Will and Testament of William Brewster Wood, deceased, also of the City of Philadelphia, State of Pennsylvania, and a late citizen of the said State of Pennsylvania, bring this their Bill of Complaint against AUSTIN B. FLETCHER, as Testamentary Trustee of Conrad Morris Braker, under the Last Will and Testament of Conrad Braker, Jr., deceased, and a citizen of the State of New York, and CONRAD MORRIS BRAKER, a citizen of the State of New York, and thereupon your Orators complain and say:

*First.*—That your Orator, THE PROVIDENT LIFE AND TRUST COMPANY, is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, and is a citizen of the said State of Pennsylvania. That your Oratrix, CATHERINE STEWART WOOD, is a citizen of the State of Pennsylvania. That your Orators aforesaid are executors under the Last Will and Testament of William Brewster Wood, deceased. That the respondent, AUSTIN B. FLETCHER, is Testamentary Trustee of Conrad Morris Braker, under the Last Will and Testament of Conrad Braker, Jr., deceased, and is a resident of the City of New York, State of New York, and a citizen of the said State of New York, and that the respondent, Conrad Morris Braker, is a resident of the City of New York, State of New York, and a citizen of the said State of New York.

*Second.*—That the jurisdiction of this Court depends upon the diverse citizenship of the parties hereto, and the amount in controversy exceeds the sum of Three Thousand Dollars (\$3,000).

*Third.*—That the aforementioned Conrad Braker, Jr., departed this life on the twenty-first day of July, 1890, having first made and published his Last Will and Testament in writing, bearing date the twentieth day of February, 1890, a copy of which is hereunto annexed, marked Exhibit "A" and made a part of this Bill of Complaint to all intents and purposes and with the same force and effect as if herein fully and at large set forth. That the said Conrad Braker, Jr., at the time of his decease, was a resident of the City, County and State of New York.

*Fourth.*—That on the thirteenth day of September, 1890, the said Will was duly admitted to probate by the Surrogate's Court of the County of New York, in the State of New York, and there recorded in Book of Wills, No. 435, at page 383, and following.

That thereupon letters testamentary were issued out of the said Court to Henry J. Braker and Frances J. Braker, as executor and executrix respectively of the said Last Will and Testament; and the said executor and executrix took upon themselves the duty of administering the estate of the said Conrad Braker, Jr., deceased, and received and collected the assets thereof.

*Fifth.*—That under and pursuant to the provisions of the "Sixteenth" paragraph of the said Last Will and Testament, the whole amount so held in trust for the said Conrad Morris Braker, less the sum of \$25,000 was to be paid to the said Conrad Morris Braker when he should attain the age of fifty-five years, to wit, on the twenty-fifth day of February, 1913.

*Sixth.*—That out of and from the assets of the said estate so received and collected as aforesaid, the

aforementioned executor and executrix paid over to Henry J. Braker all that remained out of the certain "other one-half of all the rest, residue and remainder, both real and personal, wheresoever situated," in trust for the special benefit of Conrad Morris Braker, the son of the aforesaid testator, Conrad Braker, Jr., such payment being made in accordance with the provisions of the "Sixteenth" paragraph of the aforementioned Will of the said testator, and to be held in trust by the said trustee as likewise provided for and directed by the said paragraph of the said Will, such remainder, as your Orators are informed and verily believe, aggregating \$120,731.50.

*Seventh.*—That by an Order and Decree of the said Surrogate's Court of the County of New York, entered the sixteenth day of November, 1897, Austin B. Fletcher, defendant herein, was appointed as Testamentary Trustee for Conrad Morris Braker under the aforementioned Last Will and Testament of Conrad Braker, Jr., deceased, to succeed the said Henry J. Braker, and to execute the unexecuted trusts of which the said Henry J. Braker was trustee under the said Will, and then and there received, and now holds, said trust fund.

*Eighth.*—That the said Conrad Morris Braker attained the age of fifty-five years on the 25th day of February, 1913, and he or his assigns then and there became entitled to receive and have paid to him, or them, the said one-half of the residuary estate, amounting, as your Orators are informed and verily believe, to the sum of \$120,731.50, which said sum has been held in trust for him as aforesaid under the "Sixteenth" paragraph of the said Will.

*Ninth.*—That on the 25th day of February, 1902, and by a certain instrument in writing bearing date of that day, the said Conrad Morris Braker sold and assigned to the New York Finance Company, a corporation duly incorporated and existing under the laws of the State of New York, all the “estate, right, title and interest of any kind, form or description whatsoever to the amount or extent of Thirty-five Thousand Dollars (\$35,000) and no more of, in and to the legacy of Fifty Thousand Dollars (\$50,000), and also in and to the legacy of the part or share of the residuary estate” to which the said Conrad Morris Braker was entitled under and by virtue of the “Fifteenth” and “Sixteenth” paragraphs of the said Last Will and Testament of Conrad Braker, Jr., deceased, subject only to the payment of the sum of seven-tenths of the legacy of \$50,000, payable under the “Fifteenth” paragraph of the said Will theretofore assigned to one Frank L. Rabe, amounting to \$35,000. The said assignment was duly recorded in the Office of the Register of the County of New York in Liber 4 of Miscellaneous Instruments, page 231, on the first day of March, 1902; and also further recorded in the Office of the Surrogates of the County of New York in Liber 5 of Conveyances and Mortgages of Interests in Decedents’ Estates, page 54, on the tenth day of February, 1908. A copy of the said assignment is hereunto annexed, marked Exhibit “B” and made a part of this Bill of Complaint to all intents and purposes and with the same force and effect as if herein fully and at large set forth.

*Tenth.*—That on the fifth day of March, 1902, the said New York Finance Company did make and deliver unto William Brewster Wood its certain Prom-

issory Note bearing date also of that day, and providing for the payment of the said sum of Fifteen Thousand Dollars (\$15,000). Thereafter, to wit, on the fifth day of July, 1903, the said New York Finance Company did make, execute and deliver in renewal of the said Note its certain Note for \$15,000 bearing date on the same day. That said Note bore interest at the rate of Six per cent. from the date thereof. A copy of the said Promissory Note is hereunto annexed, marked Exhibit "C" and made a part of this bill of Complaint to all intents and purposes and with the same force and effect as if herein fully and at large set forth.

*Eleventh.*—That on or about the fifth day of March, 1902, the said New York Finance Company, as collateral security for the payment of the said Note, and for any renewal or renewals thereof, sold, transferred, assigned and set over to the said William Brewster Wood all its right, title and interest of any kind, form or description which the said New York Finance Company had in the "Sixteenth" paragraph of the said Last Will and Testament of Conrad Braker, Jr., deceased, by virtue of the aforesaid assignment made by the said Conrad Morris Braker to the New York Finance Company, bearing date February 25th, 1902, and attached hereto as Exhibit "B." A copy of the said assignment is hereunto annexed, marked Exhibit "D" and made a part of this Bill of Complaint to all intents and purposes and with the same force and effect as if herein fully and at large set forth. The said assignment was duly recorded in the Office of the Register of the County of New York in Liber 6 of Miscellaneous Instruments, page 390, on the 14th day of October, 1907, and was also further recorded in the Office of the Surrogates of the County of New York in

Liber 5 of Conveyances and Mortgages of Interests in Decedents' Estates, page 51, on the 10th day of February, 1908.

*Twelfth.*—That on or about the Fourteenth day of May, 1912, and by a certain instrument in writing bearing date of that day, the said New York Finance Company sold, transferred, set over and assigned to Catherine Stewart Wood and The Provident Life and Trust Company, of Philadelphia, executors under the Last Will and Testament of William Brewster Wood, all their right, title and interest in and to the right, title and interest which it, the said New York Finance Company, had in and to the certain residuary estate to which the said Conrad Morris Braker was entitled under the provisions of the "Sixteenth" paragraph of the said Last Will and Testament of Conrad Braker, Jr., deceased. A copy of the said Assignment is hereto annexed, marked Exhibit "E" and made a part of this Bill of Complaint to all intents and purposes and with the same force and effect as if herein fully and at large set forth. The said assignment was duly recorded in the Office of the Register of the County of New York in Liber 2 of Decedents' Estates, page 45, on the 22nd day of May, 1912, and was further recorded in the Office of the Surrogates of the County of New York in Liber 11 of Conveyances and Mortgages of Interests in Decedents' Estates, page 302, on the First day of June, 1912.

*Thirteenth.*—Your Orators further show that on the Twenty-fifth day of February, 1913, your Orators made demand upon the respondent, Austin B. Fletcher, as Testamentary Trustee of Conrad Morris Braker, under the Last Will and Testament of Conrad Braker,



Jr., deceased, for the payment to your Orators of the said Twenty Thousand Dollars (\$20,000) payable under the "Sixteenth" paragraph of the aforementioned Last Will and Testament of Conrad Braker, Jr., deceased; that said demand was made upon William P. S. Melvin, attorney for the respondent, Austin B. Fletcher, the said William P. S. Melvin having stated that the respondent Austin B. Fletcher was absent from the State of New York, and the said demand was also made upon Safford A. Crummey, the person in charge of the office of said respondent; that the respondent, Austin B. Fletcher, as Testamentary Trustee of Conrad Morris Braker as aforesaid did then and there neglect and refuse to pay over to your Orators the said Twenty Thousand Dollars (\$20,000) payable under the "Sixteenth" paragraph of the aforesaid Last Will and Testament of Conrad Braker, Jr., deceased; that before the making of the aforesaid demand, the said respondent had notified complainants that he would resist the payment to them of the amount now claimed by them.

*Fourteenth.*—Your orators further show that the assignment of the said Conrad Morris Braker to the said New York Finance Company, attached hereto as Exhibit "B," was and is an absolute sale of Twenty Thousand Dollars (\$20,000) payable under the "Sixteenth" paragraph of the aforementioned Last Will and Testament of Conrad Braker, Jr., deceased, and that by said assignment and the several mesne assignments hereinabove recited, an absolute title was and is vested in your Orators in and to the aforesaid Twenty Thousand Dollars (\$20,000) payable under the "Sixteenth" paragraph of the aforementioned Last Will and Testament of Conrad Braker, Jr., deceased.

*Fifteenth.*—Your Orators further show that Conrad Morris Braker now pretends and alleges that said assignment was in effect security for a usurious loan, and is therefore null and void. Your Orators are advised that the said Conrad Morris Braker is not a necessary party, but is a proper party defendant herein, and your Orators are further advised, allege, and aver, first, that the said assignment was in fact and in law an absolute sale; second, that the said Conrad Morris Braker is precluded by the Statute of Limitations of the State of New York from any and all attempt to set aside the said assignment because the said assignment and the transaction relating thereto was entered into and concluded on or about the Twenty-fifth day of February, 1902, a period of more than three years, and a period of more than ten years prior to this date, and that no action has ever been begun by the said Conrad Morris Braker to set aside, or have declared void, the aforesaid assignment. That any action by the said Conrad Morris Braker is therefore barred by the Third paragraph of Section Three Hundred and Eighty-three, and by Section Three Hundred and Eighty-eight of the Code of Civil Procedure of the State of New York.

*Sixteenth.*—Your Orators are further advised that in accordance with the Constitution and Statutes of the United States they are entitled to have heard and determined by this Court their rights in and to the aforesaid legacy, free from any and all attempts and efforts which may, or shall be made by the respondents herein, or either of them, to evade the jurisdiction of this Honorable Court.

WHEREFORE your Orators need equitable relief, and pay:

(a) That your Orators may be declared entitled to the immediate possession of the said Twenty Thousand Dollars (\$20,000) payable under the "Sixteenth" paragraph of the aforementioned Last Will and Testament of Conrad Braker, Jr., deceased.

(b) That your Honorable Court may order and direct that Austin B. Fletcher, as Testamentary Trustee under the aforementioned Last Will and Testament of Conrad Braker, Jr., deceased, shall be ordered and directed to pay to your Orators the said Twenty Thousand Dollars (\$20,000).

(c) That your Honorable Court will order, adjudge and decree that the respondent herein, Conrad Morris Braker, has no title to, or right in, the aforementioned Twenty Thousand Dollars (\$20,000) which he is entitled in any way to enforce against your Orators.

(d) That your Honorable Court will grant an Injunction prohibiting and restraining the respondents herein, and each of them, from litigating, or attempting to litigate in any other Court the controversy and issues raised herein.

(e) That your Orators may have such further and general relief in the premises, as the nature of the case may require, and shall be agreeable to equity and good conscience.

(f) And your Orators further pray that your Honorable Court may issue a writ of subpoena to the defendants above-named, Austin B. Fletcher, as Testamentary Trustee of Conrad Morris Braker, under the Last Will and Testament of Conrad Braker, Jr., deceased, and Conrad Morris Braker, thereby commanding them, and each of them, at a certain time and

under a certain penalty therein to be limited, personally to appear before your Honorable Court, and then and there full, true and perfect answer make, but not under oath, answer under oath being hereby expressly waived, to all and singular the premises, and further to stand to, perform and abide by such further order or direction or decree herein as to your Honorable Court may seem meet.

And your Orators will ever pray.

MILLER, KING, LANE & TRAFFORD,  
PERRY D. TRAFFORD,

*Solicitors for Complainant.*

DICKSON, BEITLER & McCOUCH,

PERRY D. TRAFFORD,

*Of Counsel.*

---

#### EXHIBIT "A."

*In the Name of God, Amen.*

I, Conrad Braker, Jr., of the City, County and State of New York, being of sound mind and memory and knowing the uncertainty of this mortal life, do make, publish and declare this to be my Last Will and Testament, hereby revoking and annulling all wills by me heretofore made, in manner and form following, that is to say:

*First.*—I direct that all my just debts and funeral expenses be paid as soon as convenient.

*Second.*—I give, devise and bequeath to my beloved wife, Frances J. Braker, the sum of One Hundred and twenty-five thousand dollars (\$125,000) and I direct that the same shall be and belong to her absolutely and

free from any restrictions of whatsoever nature, and I further direct that the same shall be paid to her within eighteen months after my decease, with interest at the rate of five (5) per centum per annum, payable quarterly upon the amount paid until the entire sum is paid.

It is my desire and I so direct that the above bequest shall have priority over any and all other bequests made in this my Last Will and Testament, and if not paid immediately upon my decease, I direct that such reasonable security as she may desire shall be given her for its payment within the time specified.

And I further give, devise and bequeath unto my said wife, all my furniture, pictures, plate, jewelry, ornaments, horses, carriages, wagons and harness, and I direct that the above provisions made for her shall be received in lieu of dower.

*Third.*—I give devise and bequeath to my son Henry J. Braker, his heirs and assigns, all my real and personal property of whatsoever nature or description situated in Hamilton Township, McKean County, State of Pennsylvania, consisting of Warrant No. 4912 and containing about ten hundred and fifty acres (1050); also my mill property at New Brooklyn, (now called South Plainfield) New Jersey. The same to be and belong to him absolutely and at his disposal.

And I further direct that should any of the property mentioned in this section be sold or otherwise disposed of previous to my death, that within twelve months after my decease my said son, Henry J. Braker, shall in its place receive the amount obtained for the same.

*Fourth.*—I give, devise and bequeath unto my son, Conrad Morris Braker, his heirs and assigns, my prop-

erty in Nyack-on-the-Hudson, State of New York, the same being situated on Broadway in the said City and consisting of about two (2) acres of land; also my property in Township No. 41 Jefferson County, State of Missouri, consisting of about 120 (one hundred and twenty acres). Also my interest in about ninety-six acres of land, known as Disbrough Farm and situated in Millstone, Hilborough Township, Somerset County, New Jersey, my interest in the same being sixty-five per cent. (65%). Also my lot consisting of about two acres in New Brooklyn, New Jersey; the same being distinct and apart from the property in said New Brooklyn given to my son Henry J. Braker, the same to be and belong to him absolutely and at his disposal.

And I further direct that should any of the property mentioned in this section be sold or otherwise disposed of previous to my death, that within twelve months after my decease my said son, Conrad Morris Braker, shall in its place receive the amount obtained for the same.

*Fifth.*—I give, devise and bequeath unto my sister, Mrs. Louise Eckart, to have and to hold to her, his heirs, executors, administrators and assigns forever the sum of Twenty Thousand (\$20,000) Dollars, the same to be paid to her within two years after my decease with interest at the rate of Five (5) per centum, to be paid quarterly upon the amount remaining unpaid, until the entire sum is paid.

*Sixth.*—I give, devise and bequeath unto my brother, George Braker to have and to hold to him, his heirs, executors, administrators and assigns forever the sum of Twenty Thousand (\$20,000) Dollars, the same to be paid to him within two years after my decease, with interest at the rate of Five (5) per centum

per annum, to be paid quarterly upon the amount remaining unpaid until the entire sum is paid.

*Seventh.*—I give, devise and bequeath unto my brother, John Henry Braker, to have and to hold to him, his heirs, executors, administrators, and assigns forever the sum of Fifteen Thousand (\$15,000) Dollars, and I direct that the same shall be paid to him within two years after my decease with interest payable quarterly upon the amount remaining unpaid at the rate of five (5) per centum per annum until the entire sum be paid.

*Eighth.*—I give, devise and bequeath to Mrs. Charles E. Morris, now of the City of Brooklyn, State of New York, the sum of One Thousand (\$1,000) Dollars, the same to be and belong to her, without restriction, and I direct that the said sum shall be paid to her within One Year from my decease.

*Ninth.*—I give, devise and bequeath to my friend, William D. Faris, now of the City of Brooklyn, State of New York, the sum of One Thousand (\$1,000) Dollars, the same to be and belong to him absolutely and without restriction, and I direct that the said sum be paid to him within One Year from my decease.

*Tenth.*—I give, devise and bequeath to William V. McKenzie, of Rahway, State of New Jersey, the sum of One Thousand (\$1,000) Dollars and direct that the same shall be paid to him within One Year from the date of my decease.

*Eleventh.*—After the above payments have been made as aforesaid and directed, I give, devise and bequeath one-half of the rest, residue and remainder of my estate both real and personal, of whatsoever de-

scription and wheresoever situated to my son, Henry J. Braker, his heirs and assigns, the same to be and belong to him absolutely and without restriction.

*Twelfth.*—Out of the other one-half ( $\frac{1}{2}$ ) of all the rest, residue and remainder of my estate, both real and personal wheresoever situated, I give and bequeath to my son, Conrad Morris Braker, the sum of Thirty Thousand Dollars (\$30,000), and I direct that of this sum, Five Thousand Dollars (\$5,000) shall be paid to him within sixty (60) days from the date of my decease, and the remaining Twenty-five Thousand Dollars (\$25,000) of the above Thirty Thousand Dollars (\$30,000), shall be paid to him within six months from the date of my decease, and until the above amounts are paid to him, I direct that he shall receive interest on the same at the rate of five (5) per centum per annum.

*Thirteenth.*—Out of the above said other one-half of all the rest, residue and remainder of my estate, both real and personal, wheresoever situated, I give and bequeath to William D. Faris the sum of Twenty Thousand Dollars (\$20,000) and I direct that the same shall be paid to him within nineteen months of the date of my decease, and that he shall hold the same in trust for the benefit of my grandchild, Florence May Braker, until she shall attain the age of twenty-one years, which will be May thirtieth, nineteen hundred and five (A. D. 1905) at which time I direct that the said sum together with any acerued and unpaid interest or increase shall be paid to her and be and belong to her absolutely. But I further direct that, if it shall appear necessary to the said trustee for the proper maintenance, support or education of my said grandchild, the interest or increase derived from this



bequest may be used for and applied to the above purposes, and her receipt notwithstanding her infancy, shall be an effectual discharge for the same but the principal shall remain intact until May thirtieth, nineteen hundred and five (A. D. 1905) if she shall live until that date. In the event of the death of my said grandchild, Florence May Braker, before she attains the age of twenty-one years, I direct that the principal and any accrued and unpaid interest or increase shall be paid to my son, Conrad Morris Braker, within six months of the date of her decease, if he be then living, if he shall not be living at the date of the death of my said grandchild, Florence May Braker, I direct that the said bequest shall revert to my residuary estate.

*Fourteenth.*—Out of the above said other one-half of all the rest, residue and remainder of my estate, both real and personal wherever situated, I give and bequeath to Henry J. Braker the sum of Fifty Thousand Dollars (\$50,000), and I direct that the same shall be paid to him within nineteen months from the date of my decease, and that he shall hold the same IN TRUST and securely invested for the special benefit of my son, Conrad Morris Braker, and I direct that the interest or increase on the same or on such an amount as shall be unpaid as hereinafter set forth, shall be paid to him quarterly so long as he shall live, but I further direct that if he be living at the expiration of ten years from the date of my decease that the said trustee shall pay to my said son, Conrad Morris Braker, the sum of Twenty Thousand Dollars (\$20,000) of said principal together with any accrued and unpaid interest should there be any, and the same shall be and belong to him absolutely.

Should my said son be living at the expiration of fifteen years from the date of my decease, I direct that he shall be paid the further sum of Twenty Thousand Dollars (\$20,000), together with any accrued and unpaid interest on the said remaining Thirty Thousand Dollars (\$30,000) and the same shall be and belong to him absolutely.

Should my said son be living at the expiration of twenty years from the date of my decease, I direct that the remaining Ten Thousand Dollars (\$10,000) of the above mentioned sum, together with any accrued and unpaid interest on the said remaining Ten Thousand Dollars (\$10,000) shall be paid to him and the same shall be and belong to him absolutely.

*Fifteenth.*—Out of the said other one-half of all the rest, residue and remainder of my estate, both real and personal wheresoever situated, I give and bequeath to my son Henry J. Braker, the further sum of Fifty Thousand Dollars (\$50,000), and I direct that the same shall be paid to him within three years from the date of my decease, and that he shall hold the same in trust and securely invest it for the benefit of my said son, Conrad Morris Braker, paying him the interest derived from the same semi-annually from the date of my decease until he shall attain the age of fifty-five years, when I direct that the principal and any unpaid interest shall be paid to him and belong to him absolutely.

In the event of the death of my said son, Conrad Morris Braker, before he attains the age of fifty-five years, I direct that the income derived from the said Fifty Thousand Dollars (\$50,000) shall be paid semi-annually to Florence L. Braker, wife of my said son, Conrad Morris Braker, so long as she shall live and remains unmarried; in the event of her marriage or

death, I direct that the said Fifty Thousand Dollars (\$50,000) shall be given to my grandchild, Florence May Braker if she then be living, and if she be not living then the said Fifty Thousand Dollars (\$50,000) shall be paid to my son Henry J. Braker if he be living, if he be dead, I direct that it sink into my residuary estate.

*Sixteenth.*—I direct that all that remains out of the above said "other one-half of all, the rest, residue and remainder, both real and personal, wheresoever situated," after the bequests made in sections Twelfth, Thirteenth, Fourteenth and Fifteenth shall have been provided for, shall be held in trust by my wife, Frances J. Braker, and my son, Henry J. Braker, and their duly appointed successors, for the benefit of my said son, Conrad Morris Braker, until he shall attain the age of Fifty-five years, and I direct that the interest derived from said trust shall be paid to him semi-annually, and when he shall have attained the age of fifty-five years, I direct that the whole amount less the sum of Twenty-five thousand Dollars (\$25,000) shall be paid and belong to him absolutely.

*Seventeenth.*—I direct that if my son, Conrad Morris Braker, shall attain the age of fifty-four years that the trustees of the fund referred to in the above section shall purchase with the said twenty-five thousand dollars (\$25,000) an annuity for the benefit of my said son from such a Company as they shall deem best and safest.

*Eighteenth.*—I further direct in the event of the death of my said son, Conrad Morris Braker before he shall have received the bequests made to and for him, and specified in sections Fourth, Twelfth, Fourteenth, Fifteenth and Sixteenth, then said bequests shall pass

absolutely and at once to my son, Henry J. Braker, his executors and assigns, unless otherwise specified in said sections.

*Nineteenth.*—I further direct that the trustees of any of the above bequests may at any time sell any property or securities held by them and securely reinvest the proceeds as they shall deem best.

*Twentieth.*—I direct that any one who shall dispute or contest this my Last Will and Testament, shall forfeit one-half (1/2) of the legacies or benefits they would otherwise receive under it, and the amount so forfeited shall revert to my residuary estate.

*Twenty-first.*—I nominate, constitute and appoint my son, Henry J. Braker, and my beloved wife, Frances J. Braker, the executor and executrix of this my Last Will and Testament, and I direct that the survivor shall be empowered to appoint a co-executor and in the event of either dying or failing to serve, it is my Will that another shall be appointed at once and that no one person shall serve alone as my executor or executrix, and I direct that neither my son, Henry J. Braker, or my beloved wife, Frances J. Braker, shall be required to give any bond or bonds for the execution of their duties.

*Twenty-second.*—I further direct that my son, Henry J. Braker, or my beloved wife, Frances J. Braker, in the event of the death of either shall individually be empowered to appoint a co-trustee, wherein they are named as such in this my last Will and Testament.

IN WITNESS WHEREOF: I, the said Conrad Braker, Jr., have hereunto set my hand and seal this Twentieth day of February, One thousand eight hundred and ninety.

C. BRAKER, JR.

Signed, sealed, published and declared, by the said testator as and for his last Will and Testament, in the presence of us and each of us, who in his presence, at his request, and in the presence of each other have hereunto subscribed our names as attesting witnesses this Twentieth day of February, One thousand eight hundred and ninety.

AUSTIN L. FLETCHER,

Murray Hill Hotel, Park Ave., N. Y. City.

J. ARTHUR HARRATT,

645 Madison Ave., N. Y. City.

G. OLNEY BLOTT,

114 West 49th St., N. Y. City.

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#### EXHIBIT "B."

WHEREAS CONRAD BRAKER, JR., late of the City, County and State of New York, departed this life on or about the 21st day of July, 1890, having first made and published his Last Will and Testament in writing, bearing date of the 20th day of February, A. D. 1890; and which said Will was thereafter duly admitted to probate by the Surrogate of the County of New York and recorded in his office in Liber 435 of Wills, page 383, etc., and

WHEREAS, wherein and whereby the said Will, the said CONRAD BRAKER, JR., did, inter alia, will as follows:

*Fifteenth.*—"Out of the said other one-half of all the rest, residue and remainder of my estate, both real and personal, wheresoever situated, I give and bequeath to my son, Henry J. Braker the further sum of

Fifty Thousand (\$50,000) Dollars and I direct that the same shall be paid to him within three years from the date of my decease, and that he shall hold the same in trust and securely invest it for the benefit of my said son CONRAD MORRIS BRAKER, paying him the interest derived from the same semi-annually from the date of my decease until he shall attain the age of fifty-five years, when I direct that the principal and any unpaid interest shall be paid to him and belong to him absolutely.

"In the event of the death of my said son, CONRAD MORRIS BRAKER before he attains the age of fifty-five years, I direct that the income derived from the said Fifty Thousand (\$50,000) Dollars shall be paid semi-annually to FLORENCE L. BRAKER, wife of my said son, CONRAD MORRIS BRAKER, so long as she shall live and remains unmarried. In the event of her marriage or death, I direct that the said Fifty Thousand (\$50,000) Dollars shall be given to my grandchild, FLORENCE MAY BRAKER if she then be living, and if she be not living, then the said Fifty Thousand (\$50,000) Dollars shall be paid to my son, HENRY J. BRAKER, if he should be living, if he be dead, I direct that it sink into my residuary estate."

*Sixteenth.*—I direct that all that remains out of the above said "other one-half of all the rest, residue and remainder, both real and personal wheresoever situated," after the bequests made in sections twelfth, thirteenth, fourteenth and fifteenth shall have been provided for, shall be held IN TRUST by my wife, FRANCES J. BRAKER, and my son, HENRY J. BRAKER, and their duly appointed successors for the benefit of my said son, CONRAD MORRIS BRAKER, until he shall attain the age of fifty-five years, and I direct that the

interest derived from said Trust shall be paid to him semi-annually and when he shall have attained the age of fifty-five years, I direct that the whole amount less the sum of Twenty-five Thousand (\$25,000) Dollars shall be paid and belong to him absolutely."

WHEREAS, by an Order and Decree of the Surrogates' Court, New York County, entered the Sixteenth day of November, A. D. 1897, AUSTIN B. FLETCHER was appointed as Testamentary Trustee for the said CONRAD MORRIS BRAKER under the aforementioned Last Will and Testament of CONRAD BRAKER, JR., deceased, to succeed the said HENRY J. BRAKER, and to execute the unexecuted Trusts of which HENRY J. BRAKER was Trustee, under the above recited Last Will and Testament; and

WHEREAS by the certain account rendered by the said AUSTIN B. FLETCHER of his proceedings as such Testamentary Trustee of the said CONRAD MORRIS BRAKER to October 1st, 1900, and filed in the Surrogates' Court, New York County, IT IS SHOWN that the Fifty Thousand (\$50,000) Dollars mentioned and provided for in the "Fifteenth" paragraph of the aforesaid Will has been duly invested as by the said Will provided for; and that the further sum of One hundred and twenty-one Thousand, eight hundred and ten Dollars and 88/100 (\$121,810.88) has been invested with the exception of a small portion thereof, for the use and benefit of the said CONRAD MORRIS BRAKER as is provided for in the "Sixteenth" paragraph of the said Will; and

WHEREAS by a certain instrument in writing, bearing date of April 18th, 1901, the said CONRAD MORRIS BRAKER assigned to one FRANK L. RABE a certain seven-tenths part of the legacy of Fifty Thousand

(\$50,000) Dollars coming to the said CONRAD MORRIS BRAKER under the aforementioned "Fifteenth" clause of the said Will, to wit, the sum of Thirty-five Thousand (\$35,000) Dollars; and

WHEREAS the said CONRAD MORRIS BRAKER is still living, and has attained the age of forty-four years;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that I, CONRAD MORRIS BRAKER, of Stamford, Fairfield County, State of Connecticut, Son of the above named testator, CONRAD BRAKER, JR., and the devisee named in his Will as hereinbefore more particularly recited, for and in consideration of the sum of One Dollar lawful money of the United States of America to me in hand well and truly paid at and before the sealing and delivery hereof by the NEW YORK FINANCE COMPANY, the receipt of all of which is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents do hereby grant, bargain, sell, assign, transfer and set over unto the said NEW YORK FINANCE COMPANY any and all my estate, right, title and interest of any kind, form or description whatsoever, to the amount or extent of Thirty-five Thousand (\$35,000) Dollars, and no more, of, in and to the legacy of Fifty Thousand (\$50,000) Dollars, and also in and to the legacy of the part or share of the residuary estate to which I am entitled under and by virtue of the "Fifteenth" and "Sixteenth" paragraphs respectively of the said Last Will and Testament of the said CONRAD BRAKER, JR., deceased, as hereinbefore recited; TO HAVE AND TO HOLD the same unto the said NEW YORK FINANCE COMPANY, its successors and assigns to and for its and their own proper use and benefit forever, and subject only to the payment of the aforementioned sum of Thirty-five thousand (\$35,000) Dollars to



ough or Manhattan, City of New York, the sum of Fifteen Thousand (\$15,000) Dollars, together with interest thereon at the rate of six per cent. per annum, payable semi-annually, having pledged herewith as collateral security all its right, title and interest in and to the estate of CONRAD BRAKER, JR., deceased, as by the certain Assignment bearing even date herewith will more fully and at large appear.

And upon the non-performance of this promise, or upon default in the payment of any interest on the said loan for the space of fifteen days after the same shall become due and payable, it hereby authorizes and empowers the holder of this note to sell any and all the right, title and interest of the said NEW YORK FINANCE COMPANY in and to the aforementioned estate of CONRAD BRAKER, JR., deceased, as is particularly described in the aforementioned Assignment, such sale to be made in the form and manner provided by law; and to apply the proceeds, or so much thereof as may be necessary to the payment of this note, and of all necessary legal, or other costs and expenses, including counsel fees and other charges connected with the collection hereof, and the sale and delivery of the said interest, holding the said NEW YORK FINANCE COMPANY responsible for any deficiency, which it hereby undertakes and agrees to pay, and accounting to the said NEW YORK FINANCE COMPANY for the surplus, if any.

NEW YORK FINANCE COMPANY,

By (Signed) ARTHUR W. DEPUE,  
*Pres.*

## EXHIBIT "D."

WHEREAS, heretofore, by a certain instrument in writing, bearing date of February 25th, 1902, one CONRAD MORRIS BRAKER did grant, bargain, sell, assign, transfer and set over to the NEW YORK FINANCE COMPANY, inter alia, any and all his estate, right, title and interest of any kind, form or description whatsoever to the amount or extent of Twenty Thousand (\$20,000) Dollars, of, in and to the certain legacy coming to him under and by virtue of the "Sixteenth" paragraph of the Last Will and Testament of CONRAD BRAKER, JR., deceased, as is by the said Assignment more particularly provided for;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the NEW YORK FINANCE COMPANY, a Corporation organized and existing under and by virtue of the Laws of the State of New York, for and in consideration of the sum of Fifteen Thousand (\$15,000) Dollars to it in hand well and truly paid at and before the sealing and delivery hereof by WILLIAM BREWSTER WOOD, receipt of all of which is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents do hereby grant, bargain, sell, assign, transfer and set over unto the said WILLIAM BREWSTER WOOD, his heirs, executors, administrators and assigns, any and all of the Estate, right, title and interest of any kind, form or description whatsoever, which the said NEW YORK FINANCE COMPANY now has or hereafter may have in said Estate of CONRAD BRAKER, JR., deceased, by virtue of the hereinbefore mentioned Assignment; TO HAVE AND TO HOLD the same unto the said WILLIAM BREWSTER WOOD, his heirs, executors, administrators and assigns to

and for his own use and benefit forever, provided, however, that if the said NEW YORK FINANCE COMPANY shall well and truly pay or cause to be paid to the said WILLIAM BREWSTER WOOD, his heirs, executors, administrators and assigns, its certain note given herewith for the sum of Fifteen Thousand (\$15,000) Dollars, together with interest at the rate of six per cent. per annum, payable on the 5th day of July, 1908, or any note or notes which may be given in renewal thereof, then this Assignment to be null and void. And the said NEW YORK FINANCE COMPANY does hereby appoint the said WILLIAM BREWSTER WOOD its true and lawful Attorney, irrevocable with full power of substitution of other Attorneys under him, and give and grant to him, his heirs, executors, administrators and assigns, full power and authority in its name or in the name of its successors or assigns, to ask, demand, sue for, recover and receive the said right, title, interest, legacies and estate hereinbefore mentioned, and particularly set forth, and to compound, acquit, release and discharge the same, hereby ratifying and confirming all and whatever he or they shall lawfully do or cause to be done in or about the premises.

IN WITNESS WHEREOF, the said NEW YORK FINANCE COMPANY has hereunto signed its name, and caused the same to be signed by its President and its corporate seal to be hereunto affixed this 5th day of March, 1902.

NEW YORK FINANCE COMPANY,

ARTHUR W. DEPUE,  
*President.*

(Seal)

STATE OF NEW YORK,  
CITY AND COUNTY OF NEW YORK, } ss.:

On the 18th day of September, in the Year One Thousand Nine Hundred and three, before me personally came ARTHUR W. DEPUE, to me known, who being by me duly sworn, did depose and say that he resided in the City of New York; that he is the President of the NEW YORK FINANCE COMPANY, the Corporation described in, and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was said corporate seal; that it was so affixed by order of the Board of Directors of the said corporation, and he signed his name thereto by like order.

ARTHUR W. DEPUE.

T. LLOYD HOLLISTER,

(Seal) *Notary Public No. 82, Kings County.*

Certificate filed in New York, Queens and Richmond Counties.

Recorded in the Office of the Register of the County of New York, in Liber 6 of Miscellaneous Instruments, page 390, on the 14th day of Oct. A. D. 1907, at 3 o'clock 25 Min. P. M.

Witness my hand and official seal.

FRANK GASS,

(Seal) *Register.*

Recorded in the Office of the Surrogates' of the County of New York, in Liber 5 of Conveyances and Mortgages of interests in Decedents' Estate, page 51, on the 10th day of Feb. A. D. 1908, at 3 o'clock P. M.

Witness my hand and seal of the Court.

DANIEL J. DOWDNEY,

(Seal) *Clerk of the Surrogates' Court.*

## EXHIBIT "E."

## KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, by a certain instrument of writing, bearing date the 25th of February, 1902, one Conrad Morris Braker sold, assigned and transferred to the New York Finance Company, *inter alia*, all his right, title and interest to the amount of Twenty Thousand Dollars (\$20,000) in and to a certain legacy coming to him under and by virtue of the Sixteenth paragraph of the Last Will and Testament of Conrad Braker, Jr., deceased;

AND WHEREAS, the New York Finance Company, by a certain instrument of writing, dated the 5th day of March, 1902, assigned to William Brewster Wood, in consideration of the sum of Fifteen Thousand Dollars (\$15,000) paid to it by him, all its right, title and interest which the said New York Finance Company then had or thereafter might have in said estate of Conrad Braker, Jr., deceased, by virtue of said above mentioned assignment, to have and to hold the same unto the said William Brewster Wood, his heirs, administrators, executors and assigns, to and for his own use and benefit forever, provided, however, that if the said New York Finance Company shall well and truly pay or cause to be paid to the said William Brewster Wood, his heirs, administrators, executors and assigns its certain note given therewith for the sum of Fifteen Thousand Dollars, together with interest at the rate of Six per cent. (6%) per annum, payable on the Fifth day of July, 1908, or any note or notes which may be given in renewal thereof, then such assignment to be null and void;

AND WHEREAS, the said William Brewster Wood died on the 24th day of April, 1905, having left a Last Will and Testament which was duly probated in the

Register's office of Philadelphia County, State of Pennsylvania, and Letters Testamentary thereon issued to his wife and The Provident Life & Trust Company, the Executors named therein;

AND WHEREAS, there is now due and owing on said note of said New York Finance Company the sum of Fifteen Thousand Dollars, with interest at the rate of Six per cent. per annum from January 5, 1907, making the total amount due as of this date Nineteen Thousand Seven Hundred Twenty-five Dollars (\$19,725), so that the equity of the New York Finance Company therein does not exceed Two Hundred and Seventy-five Dollars (\$275) at the present time, and as Twenty Thousand Dollars so assigned as collateral security is not payable, under the terms of the will of the said Conrad Braker, Jr., deceased, until the said Conrad Morris Braker attains the age of fifty-five years, which event will not occur before the month of February, 1913, by which time the additional interest accruing on said debt of \$15,000 would amount to approximately Seven Hundred and Fifty Dollars (\$750) or more than sufficient to absorb any possible equity of the New York Finance Company in said collateral;

AND WHEREAS, the New York Finance Company is indebted to the Estate of William Brewster Wood for a balance of interest due on its certain note, dated the 1st day of December, 1902, for Nine Thousand Five Hundred Dollars (\$9,500), payable on the 1st day of December, 1907, but now reduced by proceeds of collateral to the principal sum of Five Hundred Dollars (\$500), but leaving a balance of interest due thereon of Nine Hundred Sixty-Four and 67/100 Dollars (\$964.67), being interest unpaid from June 1st, 1907, to December 1st, 1909, as well as interest on the said reduced sum of Five Hundred Dollars from December 1st, 1909;

## Bill of Complaint

AND WHEREAS, the New York Finance Company has agreed to sell to the Executors of the Estate of William Brewster Wood any equity it might possibly have in the interest assigned by it to said William Brewster Wood in the Estate of Conrad Baker, Jr., to the extent of Twenty Thousand Dollars as collateral for said loan of Fifteen Thousand Dollars with interest, in consideration of being given a credit of One Hundred Dollars (\$100) upon the interest due by it on the note last above described.

NOW KNOW YE, that the New York Finance Company, in consideration of the premises and of One Hundred Dollars (\$100) to it in hand paid, receipt whereof is hereby acknowledged, has bargained, sold, assigned, transferred, set over and quit-claimed unto Catherine Stewart Wood and The Provident Life & Trust Company of Philadelphia, Executors of the Will of William Brewster Wood, deceased, all the equity of redemption, right, title and interest whatsoever which the said New York Finance Company now has or might or could have in and to the above described interest of Twenty Thousand Dollars in the Estate of Conrad Braker, Jr., deceased, so assigned by it to William Brewster Wood as collateral security for a debt of Fifteen Thousand Dollars and interest, as above set forth.

IN WITNESS WHEREOF, the New York Finance Company has caused these presents to be executed by its Treasurer, and the seal of the Company to be hereunto affixed, this Fourteenth day of May, A. D. 1912.

NEW YORK FINANCE COMPANY,

Sealed and delivered  
in the presence of:

RAYMOND C. KARGE,  
GEORGE KOPPENHOEFER, JR.

By WILLIAM E. FRITZ,  
*Treasurer.*

STATE OF PENNSYLVANIA, }  
COUNTY OF PHILADELPHIA, } ss.:

On the 14th day of April, in the year One Thousand Nine Hundred and Twelve (1912), before me personally came William E. Fritz to me known, who being by me duly sworn did depose and say that he is the Treasurer of the New York Finance Company, which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was said corporate seal; that it was so affixed by order of the Board of Directors of the said corporation, and that he signed his name thereto by like order.

Sworn and subscribed } WILLIAM E. FRITZ.  
before me. (Seal)

GEORGE KOPPENHOEFFER, JR.,  
(Seal) *Notary Public.*

My commission expires March 10, 1913.

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(Affidavit-Notary.)

STATE OF PENNSYLVANIA, }  
COUNTY OF PHILADELPHIA, } ss.:

I, Henry F. Walton, Prothonotary of the County of Philadelphia and Clerk of the Courts of Common Pleas of said County, which are Courts of Record having a common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following Certificate, do CERTIFY that George Koppenhoefer, Jr., Esq., before whom the annexed affidavit was made, was at the time of so doing a Notary Public for the Commonwealth of Pennsylvania, residing in the County of Philadelphia, duly commissioned and qualified to administer oaths and affirmations and to



take acknowledgements and proofs of Deeds or Conveyances for lands, tenements, and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said Notary Public and verily believe his signature thereto is genuine, and that said oath or affirmation purports to be taken in all respects as required by the laws of the State of Pennsylvania.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 20th day of May, in the year of our Lord one thousand nine hundred and twelve (1912).

HENRY F. WALTON,

(Seal)

*Prothonotary.*

Recorded in the office of the Register of the County of New York in Liber 2 of Decedents' Estates, page 45, on the 22nd day of May, A. D. 1912, at 11 o'clock 20 min. A. M.

Witness my hand and Official Seal.

MAX S. GRIFENHAGEN,

(Seal)

*Register Co. N. Y.*

Recorded in the Office of the Surrogates' of the County of New York in Liber 11 of Conveyances and Mortgages of interests in Decedents' Estates, page 302, on the 1st day of June, A. D. 1912, at 11 o'clock A. M.

Witness my hand and seal of the Court.

DANIEL J. DOWDNEY,

(Seal)

*Clerk of the Surrogates' Court.*

**ANSWER OF DEFENDANT FLETCHER AS  
TESTAMENTARY TRUSTEE.**

(Filed April 24, 1913.)

The above named defendant, Austin B. Fletcher, as testamentary trustee of Conrad Morris Braker, under the last Will and testament of Conrad Braker, Jr., deceased, separately and for himself answering the Bill of Complaint herein:

I. Admits the averments contained in the several paragraphs of the bill numbered "third," "fourth," "fifth," "sixth," and "seventh," and so much of the averments in the paragraph "first" as states that this defendant is testamentary trustee of Conrad Morris Braker, under the last will and testament of Conrad Braker, Jr., deceased, and that he is a resident of the City of New York, State of New York, and a citizen of the State of New York, and that the respondent Conrad Morris Braker is a resident of the City of New York, State of New York, and a citizen of the State of New York, and defendant admits the averments of the "eighth" paragraph, excepting, however: that this defendant has no knowledge of the assignments alleged to have been made by the "ninth" and "twelfth" paragraphs of said bill.

II. This defendant is without knowledge of the averments of fact contained in the several paragraphs of the bill numbered "ninth," "tenth," "eleventh," "twelfth," "fourteenth," and "fifteenth" and "sixteenth," and is also without knowledge that the plaintiff, the Provident Life and Trust Company, is a corporation organized under the laws of the State of Pennsylvania; or that the plaintiff, Catherine Stewart Wood is a citizen of the State of Pennsylvania. This defendant further answering is without knowl-

edge that the plaintiffs assumed to make demand upon him, as trustee, as aforesaid, in the manner averred in said bill (paragraph "thirteenth"), namely, by demanding from William P. S. Melvin, and also from Safford A. Crummey, payment of the Twenty Thousand Dollars claimed by them. And defendant avers that neither of said individuals had authority to receive or to reject such demand.

III. And for a second defense this defendant avers that upon the face of the bill it is insufficient of fact to constitute a valid cause of action.

IV. And for a third defense this defendant avers that upon the face of the bill the plaintiffs have a plain, adequate and complete remedy at law.

V. And for a fourth defense this defendant avers that upon the face of the bill this court has not cognizance of this suit.

WILLIAM P. S. MELVIN,  
*Solicitor for Defendant, Austin B. Fletcher,*  
165 Broadway, New York City, N. Y.

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### **ANSWER OF DEFENDANT BRAKER.**

(Filed May 20, 1913.)

The respondent, Conrad Morris Braker, in answer to the bill of complaint herein:

*First.*—Alleges that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph marked "First" of the bill of complaint, except the allegation which the respondent admits, namely, that the respondent, Austin B. Fletcher, is Testamentary Trustee of Conrad Morris Braker, under the Last Will and Testament of Conrad Braker, Jr., deceased, and is a resident of the

City and State of New York, and a citizen of the State of New York, and that the respondent, Conrad Morris Braker is a resident of the City and State of New York, and and a citizen of the State of New York.

*Second.*—Denies the allegations contained in paragraph marked "Second" of the bill of complaint, except that the respondent admits that the amount in controversy exceeds the sum of Three Thousand Dollars (\$3,000.00).

*Third.*—Admits the allegations contained in paragraph marked "Third" of the bill of complaint.

*Fourth.*—Admits the allegations contained in paragraph marked "Fourth" of the bill of complaint.

*Fifth.*—Admits the allegations contained in paragraph marked "Fifth" of the bill of complaint.

*Sixth.*—Admits the allegations contained in paragraph marked "Sixth" of the bill of complaint.

*Seventh.*—Admits the allegations contained in paragraph marked "Seventh" of the bill of complaint.

*Eighth.*—Admits the allegations contained in the paragraph marked "Eighth" of the bill of complaint, except the respondent denies the allegation that respondent's assigns on the 25th day of February, 1913, then and there became entitled to receive and have paid to them the said one-half of the residuary estate.

*Ninth.*—Denies the allegations contained in paragraph marked "Ninth" of the bill of complaint.

*Tenth.*—Alleges that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph marked "Tenth" of the bill of complaint.

*Eleventh.*—Denies the allegations contained in paragraph marked "Eleventh" of the bill of complaint.

*Twelfth.*—Denies the allegations contained in paragraph marked "Twelfth" of the bill of complaint.

*Thirteenth.*—Denies the allegations contained in paragraph marked "Thirteenth" of the bill of complaint.

*Fourteenth.*—Denies the allegations contained in paragraph marked "Fourteenth" of the bill of complaint.

*Fifteenth.*—Denies the allegations in paragraph marked "Fifteenth" of the bill of complaint, except respondent admits as alleged that Conrad Morris Braker now pretends and alleges that said assignment was in effect security for a usurious loan, and is therefore null and void, and that the said Conrad Morris Braker is a proper party defendant herein.

*Sixteenth.*—Denies the allegations contained in paragraph marked "Sixteenth" of the bill of complaint.

#### FOR A FIRST AND SEPARATE DEFENSE.

*Seventeenth.*—That on July 21st, 1890, Conrad Braker, Jr., the father of the respondent, died at the City of New York, New York, having first made and published his Last Will and testament in writing, bearing date the 20th day of February, 1890, a correct copy of which is annexed to and made a part of the bill of complaint herein, and marked "Exhibit A."

*Eighteenth.*—That the said will was only admitted to probate on September 13th, 1890, by the Surrogates' Court of the County of New York, in the City of New

York, and recorded at Page 383, in Book of Wills No. 435, and thereupon letters testamentary were issued out of said court to Henry J. Braker, as executor, and Frances J. Braker, as executrix, respectively, who thereupon entered upon the administration of the estate of the said Conrad Braker, Jr., deceased, and received and collected the assets thereof.

*Nineteenth.*—That under and pursuant to the provisions of the "Sixteenth" paragraph of the said Last Will and Testament, the whole amount held in trust for the respondent, Conrad Morris Braker, less the sum of Twenty-five Thousand (\$25,000) Dollars, was to be paid to the respondent, Conrad Morris Braker, when he should attain the age of fifty-five (55) years.

*Twentieth.*—That out of and from the assets of the said estate so received and collected as aforesaid, the afore-mentioned executor and executrix paid over to Henry J. Braker all that remained out of the certain "other one-half of all the rest, residue and remainder, both real and personal, wheresoever situated," in trust for the special benefit of the respondent, Conrad Morris Braker, such payment being made in accordance with the provisions of the said "Sixteenth" paragraph of the said will, and to be held in trust by the said trustee, as likewise provided for and directed by the said paragraph of the said will.

*Twenty-first.*—That by an order and decree of the said Surrogates' Court of the County of New York, entered November 16th, 1897, the respondent, Austin B. Fletcher, herein, was appointed as Testamentary Trustee for Conrad Morris Braker, under the aforementioned Last Will and Testament of Conrad Braker, Jr., deceased, to succeed the said Henry J. Braker, and

to execute the unexecuted trusts of which the said Henry J. Braker was Trustee under the said Will, and then and there received and now holds the said trust fund under and pursuant to the provisions of the "Sixteenth" paragraph of the said Will, of which the respondent, Conrad Morris Braker, is the beneficiary as aforesaid.

*Twenty-second.*—That the respondent, Conrad Morris Braker, attained the age of fifty-five (55) years on the 25th day of February, 1913, and he then became entitled to receive and have paid to him the said one-half of the residuary estate which has been held in trust for him as aforesaid under the "Sixteenth" paragraph of the said Will.

*Twenty-third.*—That on or about the 14th day of August, 1901, a corporation was organized under the laws of the State of New York, by Charles H. Burr, Arthur W. Depue, William H. Cochran and their associates, under the name of the New York Finance Company, for the purpose of purchasing any and all kinds of real and personal property and the loaning of money thereon; that the certificate of incorporation of said New York Finance Company was filed September 30th, 1901, in the office of the Clerk of New York County.

*Twenty-fourth.*—That the said Charles H. Burr, Arthur W. Depue, William H. Cochran and their associates commenced the business of loaning money on personal property on or about October 1st, 1901, under the name of the New York Finance Company, and during the year 1902 they were conducting the business of loaning money on personal property under the name of the New York Finance Company, and used said corporate name merely as a cover and cloak for their transactions.

*Twenty-fifth.*—That on the 25th day of February, 1902, at the City of New York, in the State of New York, the respondent, Conrad Morris Braker, being then a resident of Stamford, in the State of Connecticut, borrowed from the said New York Finance Company, and the said New York Finance Company loaned to the said respondent, the sum of Two Thousand One Hundred and Fifty Dollars (\$2,150.00), for a period of eleven (11) years from the date of said loan, namely, February 25th, 1902, to February 25th, 1913; upon which latter date the said loan was to be repaid. That it was then and there agreed between the respondent, Conrad Morris Braker, and the said New York Finance Company that the New York Finance Company should receive from the respondent, Conrad Morris Braker, as a consideration for the said loan for said space of time, in addition to the principal of said loan, the sum of Thirty-two Thousand Eight Hundred and Fifty Dollars (\$32,850.00), payable at the maturity of said loan.

*Twenty-sixth.*—That the interest upon said loan of Two Thousand One Hundred and Fifty Dollars (\$2,150.00) for the said period of eleven (11) years, at six per cent. (6%) per annum, the highest amount allowed by law to be paid for the loan or forbearance of money, amounts to one thousand four hundred and nineteen dollars (\$1,419.00), and no more.

*Twenty-seventh.*—That said agreement for said loan and the payment of said interest was made by the said New York Finance Company for the purpose on its part of receiving and taking a greater sum for the loan of said Two Thousand One Hundred and Fifty (\$2,150.00) Dollars than at the rate of six per cent. (6%) per annum, and that as a cloak, cover and device to hide and conceal the said excessive, illegal and



usurious rate of interest so exacted from the respondent, Conrad Morris Braker, and agreed to be paid by him to the said New York Finance Company, the said New York Finance Company, in consideration of the making of said loan, at the City of New York, New York, on or about February 25th, 1902, took a certain instrument in writing, bearing date February 25th, 1902, alleged to be an assignment to the New York Finance Company from the respondent, Conrad Morris Braker, which purported to assign all the "estate, right, title and interest of any kind, form or description whatsoever to the amount or extent of Thirty-five Thousand Dollars (\$35,000.00), and no more, of, in and to the legacy of Fifty Thousand Dollars (\$50,000.00), and also in and to the legacy of the part or share of the residuary estate" to which the said Conrad Morris Braker was entitled, and by virtue of the "Fifteenth" and "Sixteenth" paragraphs of the said Last Will and Testament of Conrad Braker, Jr., deceased, subject only to the payment of the sum of Thirty-five thousand Dollars (\$35,000.00) under the "Fifteenth" paragraph of the said Will theretofore assigned to one Frank L. Rabe, a copy of which said alleged assignment is annexed to the bill of complaint herein, made a part thereof and marked "Exhibit B."

*Twenty-eighth.*—That said contract and agreement of the respondent, Conrad Morris Braker, with the said New York Finance Company pursuant to which said loan of Two Thousand One Hundred and Fifty Dollars (\$2,150.00) was made, and the said instrument in writing dated February 25th, 1902, alleged to be an assignment from Conrad Morris Braker to the New York Finance Company, is and are usurious and void, being in violation of Chap. 20 of the Consolidated Laws of the State of New York.

*Twenty-ninth.*—That by reason of the premises the New York Finance Company acquired no interest in the said legacies bequeathed to the respondent, Conrad Morris Braker, by and under the provisions of the "Fifteenth" and "Sixteenth" paragraphs of the Will of his said father, or in the funds held under said paragraphs in said Will by the respondent, Austin B. Fletcher, as Trustee, in trust for Conrad Morris Braker, as aforesaid, or any part thereof.

*Thirtieth.*—On information and belief, that on or about March 5th, 1902, without the knowledge of the respondents, the said New York Finance Company executed an instrument in writing, purporting to assign and transfer to William Brewster Wood, the complainants' testator, all its right, title and interest of any kind, form or description which the said New York Finance Company had in the "Fifteenth" and "sixteenth" paragraphs of the said Last Will and Testament of Conrad Braker, Jr., deceased, by virtue of the aforesaid alleged assignment made by the said Conrad Morris Braker, to the said New York Finance Company, bearing date of February 25th, 1902, and attached to the bill of complaint as "Exhibit B," as alleged collateral security for the payment on July 5th, 1908, of a note for Fifteen Thousand Dollars (\$15,000.00) alleged to have been given by the said New York Finance Company to William Brewster Wood, together with interest at the rate of six per cent. (6%) per annum, and any note or notes which might be given in renewal thereof.

*Thirty-first.*—On information and belief, that William Brewster Wood was closely associated in business with those active in the management of the New York Finance Company, and was familiar with

the character of the business transacted by it, and by Charles H. Burr and associates, in the name of the New York Finance Company, and the character of the security offered as collateral to the loan alleged to have been made by him to the New York Finance Company; that he was not a bona fide or innocent purchaser, and did not loan the sum of Fifteen Thousand Dollars (\$15,000.00) to the New York Finance Company, or give or pay a valuable consideration for the alleged assignment from the New York Finance Company to him.

*Thirty-second.*—That before the 25th day of February, 1913, and before the complainants herein demanded from the respondent, Austin B. Fletcher, as Trustee, as aforesaid, the payment of the amount claimed by them, namely, Twenty Thousand Dollars (\$20,000.00), under said alleged assignment, the respondent, Conrad Morris Braker, elected to avoid said contract and agreement of loan and said alleged assignment made by him to the New York Finance Company, on February 25th, 1902, on the ground of fraud and usury, and notified the respondent, Austin B. Fletcher, as Trustee as aforesaid, that the respondent, Conrad Morris Braker, objected to the payment to the complainants herein of any part of said trust fund held by the said Trustee under the "Sixteenth" paragraph of the Will of Conrad Braker, Jr., deceased, on account of or by reason of any alleged assignments from the respondent, Conrad Morris Braker, to the New York Finance Company, and from the New York Finance Company to William Brewster Wood, or the complainants herein.

*Thirty-third.*—That if the alleged assignment from the respondent, Conrad Morris Braker, to the

said New York Finance Company, dated February 25th, 1902, and the alleged assignment from the said New York Finance Company to William Brewster Wood, dated March 5th, 1902, and the alleged assignment from the said New York Finance Company to the complainants herein, dated May 14th, 1912, are declared void, the respondent, Conrad Morris Braker, will be entitled to the sum of Twenty Thousand Dollars (\$20,000.00), as a part of the legacy bequeathed to him in, under and by the "Sixteenth" paragraph of the Will of Conrad Braker, Jr., deceased, free from any lien or claim of the complainants herein.

*Thirty-fourth.*—That the respondent, Conrad Morris Braker, was, on February 25th, 1902, a non-resident of the State of New York, having his residence at Stamford, in the State of Connecticut, and did not become a resident of the State of New York until about the year 1908, and on information and belief, that the said New York Finance Company ceased to do business, and to maintain an office within the State of New York about the year 1908; and all the officers thereof on February 25th, 1902, were, or thereafter and before the year 1908, become non-residents of the State of New York.

#### FOR A SECOND AND SEPARATE DEFENSE.

*Thirty-fifth.*—The respondent, Conrad Morris Braker, repeats the allegations contained in the preceding paragraphs of this answer number 17, 18, 19, 20, 21, 22, 23 and 24, and makes the same a part of his second defense.

*Thirty-sixth.*—That on the 25th day of February, 1902, at the City of New York, in the State of New York, the respondent, Conrad Morris Braker, being

then a resident of Stamford, in the State of Connecticut, borrowed from the said New York Finance Company, and the said New York Finance Company loaned to the said respondent, the sum of Two Thousand One Hundred and Fifty Dollars (\$2,150.00), for a period of eleven (11) years from the date of said loan, namely, February 25th, 1902, to February 25th, 1913; upon which latter date the loan was to be repaid, and the interest accumulated thereon at the rate of six per cent. per annum.

*Thirty-seventh.*—That the paper dated February 25th, 1902, executed and delivered by Conrad Morris Braker to the New York Finance Company, a copy of which is annexed to the Bill of Complaint and marked "Exhibit B," although absolute on its face and in form, and purporting to sell, assign and transfer to the New York Finance Company, all his estate, right, title and interest of any kind, form or description whatsoever, to the amount or extent of Thirty-five Thousand Dollars (\$35,000.00) in and to the legacy of Fifty Thousand Dollars (\$50,000.00), and also in and to the legacy or the part or share of the residuary estate to which he was entitled under and by virtue of the "Fifteenth" and "Sixteenth" paragraphs of the Last Will and Testament of Conrad Braker, Jr., deceased, was in truth and in fact, and was intended to be, security for the payment of said loan of Two Thousand One Hundred and Fifty (\$2,150.00) Dollars.

*Thirty-eighth.*—That at the time of the making of said loan of Two Thousand One Hundred and Fifty Dollars (\$2,150.00) to the respondent, the said New York Finance Company, through its officers, agents and attorneys, required him to execute said alleged assignment dated February 25th, 1902, as security for the

repayment of said loan and interest on February 25th, 1913, and on or about February 25th, 1902, the respondent, Conrad Morris Braker, executed and delivered a paper to the New York Finance Company, which was represented to him by the said officers, agents and employees of said Finance Company to be in the nature of a security for the repayment of said loan; that the respondent, Conrad Morris Braker, did not read said paper alleged to be an assignment to the New York Finance Company, and dated February 25th, 1903, but the same either was not read to him or, if read to him, it was read to him by one of the officers, agents or attorneys of the said New York Finance Company, and in the reading of it the fact that it was on its face and in form an absolute sale and assignment was suppressed, or the import of said paper signed by the respondent, Conrad Morris Braker, and its legal effect, were not explained to him; that the said respondent was not a lawyer and was not acquainted with or familiar with instruments of the character of this paper or the legal effect thereof, and was not at the time of the signing of the said paper represented by a lawyer; that when the negotiations connected with the making of the said loan of Two Thousand One Hundred and Fifty Dollars (\$2,150.00) took place, the said respondent was dealing with the officers, agents and employees of the said New York Finance Company, all of whom were lawyers, and the said respondent relied upon the statements, explanations and representations made by them to him before and at the time he signed said alleged assignment to said New York Finance Company, and supposed and believed and it was represented to him by the said officers, agents and attorneys of the said New York Finance Company that the paper

so signed by him was merely a security for the payment of said loan of Two Thousand One Hundred and Fifty (\$2,150.00) Dollars, that the respondent did not learn of the real form and character and legal effect of the said alleged assignment to the said New York Finance Company, dated February 25th, 1902, until shortly before he became fifty-five years of age, namely, February 25th, 1913; that the said respondent had previously before this transaction borrowed from other persons and had received two loans from Charles H. Burr, Arthur W. Depue, William H. Cochran and their associates, giving as security assignments of legacies coming to him under the will of Conrad Braker, Jr., deceased, and the said respondent supposed and believes and was induced by the statements, explanations and representations made to him by the officers, agents and attorneys of the said New York Finance Company to suppose and believe that the paper signed by him on February 25th, 1902, alleged to be an assignment to the New York Finance Company, was of the same nature and form and of the same legal effect as those he had signed in connection with the previous loans.

*Thirty-ninth.*—That the execution and delivery of the alleged assignment dated February 25th, 1905, described in paragraph "Ninth" of the bill of complaint, a copy of which is thereto annexed as "Exhibit B," by the respondent, Conrad Morris Braker, to the said New York Finance Company, was induced by and made upon the faith of certain statements, explanations and representations made to him by the said New York Finance Company through its officers, agents and attorneys, which said statements, explanations and representations the respondent has since learned were wholly false and fraudulent and were known by the

said officers, agents and attorneys of the said New York Finance Company, at the time they were made, to have been false and fraudulent; that said statements, explanations and representations consisted of statements made to the said respondent that the said paper which he was induced to sign was in form and in effect merely security for the payment of said loan and of the same general character as the papers previously signed by him in connection with two previous loans made to him by Charles H. Burr, Arthur W. Depue, William H. Cochran and associates, and that it was necessary for him to sign said paper in the form aforesaid, in order to secure said loan, all of which statements, explanations and representations were wholly false and fraudulent, as the said respondent has since learned.

That said respondent, Conrad Morris Braker, wholly relying upon the truth of said statements, explanations and representations of the officers, agents and attorneys of the said New York Finance Company, and believing the same to be true, executed and delivered said alleged assignment dated February 25th, 1902.

*Fortieth.*—That the said statements, explanations and representations and each of them made as aforesaid to said respondent by the said officers, agents and attorneys of the said New York Finance Company were false and fraudulent, and were known to be false and fraudulent by the said officers, agents and attorneys of the said New York Finance Company, at the time they were made; that they were made for the purpose of inducing the execution by the said respondent of the alleged assignment to the said New York Finance Company, dated February 25th, 1902, and that said



alleged assignment was executed and delivered upon the faith of said statements, explanations and representations.

*Forty-first.*—That all of the said acts of the officers, agents and attorneys of the said New York Finance Company were part of a plan to cheat and defraud the said respondent, Conrad Morris Braker, of his inheritance to the extent of Thirty-five Thousand Dollars (\$35,000.00), and to obtain it for their own use, purposes and control, and to deprive said respondent of his right, title and interest therein for the unconscionable small sum of Two Thousand One Hundred and Fifty Dollars (\$2,150.00).

*Forty-second.*—That by reason of the premises the New York Finance Company acquired no interest in the said legacies bequeathed to the respondent, Conrad Morris Braker, by and under the provisions of the "Fifteenth" and "Sixteenth" paragraphs of the Will of his said father, or in the funds held under said paragraphs in said Will by the respondent, Austin B. Fletcher, as Trustee, in trust for Conrad Morris Braker, as aforesaid, or any part thereof.

*Forty-third.*—On information and belief that on or about March 5th, 1902, without the knowledge of the respondents, the said New York Finance Company executed an instrument in writing, purporting to assign and transfer to William Brewster Wood, the complainants' testator, all its right, title and interest of any kind, form or description which the said New York Finance Company had in the "Fifteenth" and "Sixteenth" paragraphs of the said Last Will and Testament of Conrad Braker, Jr., deceased, by virtue of the aforesaid alleged assignment made by the said

Conrad Morris Braker to the said New York Finance Company, bearing date February 25th, 1902, and attached to the bill of complaint as "Exhibit B," as alleged collateral security for the payment on July 5th, 1908, of a note for Fifteen Thousand Dollars (\$15,000.00) alleged to have been given by the said New York Finance Company to William Brewster Wood, together with interest at the rate of six per cent. (6%) per annum, and any note or notes which might be given in renewal thereof.

*Forty-fourth.*—On information and belief, that William Brewster Wood was closely associated in business with those active in the management of the New York Finance Company, and was familiar with the character of the business transacted by it, and by Charles H. Burr and associates, in the name of the New York Finance Company, and the character of the security offered as collateral to the loan alleged to have been made by him to the New York Finance Company; that he was not a bona fide or innocent purchaser, and did not loan the sum of Fifteen Thousand Dollars (\$15,000.00) to the New York Finance Company, or give or pay a valuable consideration for the alleged assignment from the New York Finance Company to him.

*Forty-fifth.*—On information and belief, that on or about the 14th day of May, 1912, the said New York Finance Company executed and delivered to the complainants herein an alleged assignment which purported to sell, transfer, set over and quit-claim unto the complainants all the equity of redemption, right, title and interest whatsoever which the said New York Finance Company then had or might or could have in and to the above described interest of Twenty Thou-

sand (\$20,000.00) Dollars, in the estate of Conrad Braker, Jr., deceased, which had been assigned by it to William Brewster Wood as collateral security for said debt of Fifteen Thousand Dollars (\$15,000.00), with interest; that the said alleged assignment was a sham and without consideration, and was made for the apparent purpose of transferring any equity of redemption which was thought then to reside in the New York Finance Company, and upon the ground that the New York Finance Company had failed to pay its note of Fifteen Thousand Dollars (\$15,000.00), signed and delivered to William Brewster Wood, as aforesaid; that the said alleged assignment from the said New York Finance Company to complainants was without consideration and void and conferred no title upon complainants; that the complainants were notified prior to the execution of said alleged assignment by the New York Finance Company to the complainants, namely, on or about April 10th, 1912, by an agent or representative of the respondent, Conrad Morris Braker, of the infirmities of the said alleged assignment from Conrad Morris Braker to the New York Finance Company, dated February 25th, 1902, and that the same would be contested by the respondent, Conrad Morris Braker, on account of the usury and fraud in connection with the same; that the said alleged assignment from the said New York Finance Company to the complainants, dated May 14th, 1912, was without consideration and void, and conferred no title upon the complainants; and that the complainants were not bona fide or innocent purchasers without notice of the character of the preceding assignments.

*Forty-sixth.*—That before the 25th day of February, 1913, and before the complainants herein de-

manded from the respondent, Austin B. Fletcher, as Trustee, as aforesaid, the payment of the amount claimed by them, namely, Twenty Thousand Dollars (\$20,000.00) under said alleged assignment, the respondent, Conrad Morris Braker, elected to avoid said contract and agreement of loan and said alleged assignment made by him to the New York Finance Company on February 25th, 1902, on the ground of fraud and usury, and notified the respondent, Austin B. Fletcher, as Trustee, as aforesaid, that the respondent, Conrad Morris Braker, objected to the payment to the complainants herein of any part of said trust fund held by the said Trustee under the "Sixteenth" paragraph of the Will of Conrad Braker, Jr., deceased, on account of or by reason of any alleged assignments from the respondent, Conrad Morris Braker, to the New York Finance Company, and from the New York Finance Company to William Brewster Wood, or the complainants herein.

*Forty-seventh.*—That if the alleged assignment from the respondent, Conrad Morris Braker, to the said New York Finance Company, dated February 25th, 1902, and the alleged assignment from the said New York Finance Company to William Brewster Wood, dated March 5th, 1902, and the alleged assignment from the said New York Finance Company to the complainants herein, dated May 14th, 1912, are declared void, the respondent, Conrad Morris Braker, will be entitled to the sum of Twenty Thousand Dollars (\$20,000.00) as a part of the legacy bequeathed to him in, under and by the "Sixteenth" paragraph of the Will of Conrad Braker, Jr., deceased, free from any lien or claim of the complainants herein.

*Forty-eighth.*—That the respondent, Conrad Morris Braker, hereby tenders and offers to pay to the complainants herein or to the person or persons whom this Honorable Court shall adjudge to be entitled to receive the same the amount of said loan, namely, Two Thousand One Hundred and Fifty Dollars (\$2,150.00), received by him at the time of the signing of said paper, dated February 25th, 1902, alleged to be an assignment to the New York Finance Company, with legal interest thereon from February 25th, 1902, to be computed by this Court, and hereby tenders and offers to pay, and upon the trial of this action will ask leave of this Court to tender and pay to the complainants in this action, or such person or persons as this Court may determine is entitled to receive the same, a part of said sum loaned with interest which shall bear the same ratio to the whole sum loaned, namely, Two Thousand One Hundred and Fifty Dollars (\$2,150), as the amount claimed by the complainants, namely, Twenty Thousand Dollars (\$20,000), bears to the total amount of the legacies, namely, Thirty-five Thousand Dollars (\$35,000) alleged to have been assigned by Conrad Morris Braker to the said New York Finance Company by said alleged assignment dated February 25th, 1902, or, in other words, a sum equivalent to four-sevenths of the amount of said loan of Two Thousand One Hundred and Fifty Dollars (\$2,150), and interest.

That this action was commenced on February 25th, 1902, the day said loan of Two Thousand One Hundred and Fifty Dollars (\$2,150) became due and payable, and for this reason and because the complainants are non-residents and the New York Finance Company has long since ceased to maintain an office within the State

of New York, the respondent could not sooner make the tender and offer aforesaid.

*Forty-ninth.*—That the respondent, Conrad Morris Braker, was, on February 25th, 1902, a non-resident of the State of New York, having his residence at Stamford, in the State of Connecticut, and did not become a resident of the State of New York until about the year 1908, and on information and belief, that the said New York Finance Company ceased to do business and to maintain an office within the State of New York about the year 1908; and all the officers thereof, on February 25th, 1902, were, or thereafter and before the year 1908, became non-residents of the State of New York.

#### FOR A THIRD AND SEPARATE DEFENSE.

*Fiftieth.*—That the alleged assignment from the New York Finance Company to William Brewster Wood, dated March 5th, 1902, a copy of which is annexed to the bill of complaint herein and marked "Exhibit D," and the alleged assignment from the New York Finance Company to the complainants herein, dated May 14th, 1912, a copy of which is annexed to the bill of complaint herein and marked "Exhibit E," were not executed, acknowledged and certified according to law, and there was no valuable or adequate consideration for said alleged assignments.

#### FOR A FOURTH AND SEPARATE DEFENSE.

*Fifty-first.*—That the United States District Court for the Southern District of New York has no jurisdiction of the parties to this action or of the subject matter thereof.

## FOR A FIFTH AND SEPARATE DEFENSE.

*Fifty-second.*—On information and belief, that the New York Finance Company, Robert C. Banes, of Philadelphia, Pa., as Trustee of and under the Last Will and Testament of Charles H. Banes, deceased, and Warner J. Banes, deceased, and Joseph Chapman, of Philadelphia, Pa., and Grace A. Jeffords, of Philadelphia, Pa., as Executors of and under the Last Will and Testament of Charles A. Chase, have or claim to have an interest in the estate of Conrad Braker, Jr., deceased, under the alleged assignment, dated February 25th, 1902, from Conrad Morris Braker to the said New York Finance Company, and they are therefore necessary parties to this action.

## FOR A SIXTH AND SEPARATE DEFENSE.

*Fifty-third.*—That the bill of complaint herein on its face does not state sufficient facts to constitute a valid cause of action in equity.

WHEREFORE, the respondent, Conrad Morris Braker, demands judgment:

(1) That said loan of Two Thousand One Hundred and Fifty Dollars (\$2,150) was made as the result of a usurious or fraudulent contract, and that the same be adjudged and decreed to be null and void.

(2) That said alleged assignments from Conrad Morris Braker to the New York Finance Company and from the New York Finance Company to William Brewster Wood and to the complainants be adjudged and decreed to be illegal and null and void, and be ordered to be delivered up and cancelled.

Or, in case the Honorable Court shall refuse to render judgment as heretofore prayed for, then, in that

event, the respondent, Conrad Morris Braker, demands judgment as follows:

(3) That said alleged assignment from Conrad Morris Braker to the New York Finance Company, dated February 25th, 1902, may be adjudged and decreed to be invalid as procured by fraud and to have been and to be a mortgage, and that it was given only as collateral security for the payment of said indebtedness of Two Thousand One Hundred and Fifty Dollars (\$2,150), with legal interest thereon, and that said interest may be ascertained and computed by this Court.

(4) That it be adjudged and decreed that William Brewster Wood and the complainants herein were not bona fide purchasers from the New York Finance Company.

(5) That the complainants may be ordered and directed by this Court to receive and accept a sum equal to four-sevenths of the said loan of Two Thousand One Hundred and Fifty Dollars (\$2,150), with legal interest thereon from February 25th, 1902, as ascertained and computed by this Court, and that, upon payment of said sum of money into the Court by the respondent, Conrad Morris Braker, the said assignments from Conrad Morris Braker to the New York Finance Company and from the New York Finance Company to William Brewster Wood and the complainants herein, be discharged and cancelled.

(6) That the bill of complaint herein be dismissed with costs, and

(7) That the respondent, Conrad Morris Braker, may have such other and further judgment, order or



58 Complainants' Reply to Answer of Respondent

relief in the premises as may seem to this Court just and equitable.

Dated New York City, May 19th, 1913.

SAFFORD A. CRUMMEY,  
*Solicitor for Respondent, Conrad  
Morris Braker,*

Office and P. O. Address, 165 Broadway,  
Borough of Manhattan, New York City.

---

**COMPLAINANTS' REPLY TO THE ANSWER OF  
RESPONDENT, CONRAD MORRIS BRAKER.**

(Filed June 10, 1913.)

These plaintiffs, The Provident Life and Trust Company and Catharine Stewart Wood, as Executors of the Last Will and Testament of William Brewster Wood, deceased, repeating and affirming the averments made by them in the Bill of Complaint heretofore filed in this case, in reply to the so-called "Answer" of Conrad Morris Braker herein:

*First.*—Admit the allegations contained in the paragraph marked "Seventeenth" of said "Answer."

*Second.*—Admit the allegations contained in the paragraph marked "Eighteenth" of said "Answer."

*Third.*—Admit the allegations contained in the paragraph marked "Nineteenth" of said "Answer."

*Fourth.*—Admit the allegations contained in the paragraph marked "Twentieth" of said "Answer."

*Fifth.*—Admit the allegations contained in the paragraph marked "Twenty-first" of said "Answer."

*Sixth.*—Deny the allegations contained in the paragraph marked "Twenty-second" of said "An-

Complainants' Reply to Answer of Respondent 59

swer," except that complainants admit that the said Conrad Morris Braker attained the age of fifty-five years on the 25th day of February, 1913.

*Seventh.*—Admit that the New York Finance Company was incorporated during the year 1901, as averred in the paragraph marked "Twenty-third" of said "Answer"; that the certificate of incorporation was filed September 30th, 1901, in the office of the Clerk of the County of New York. Complainants have no knowledge or information as to the other allegations of said paragraph marked "Twenty-third" of said answer sufficient to form a belief as to the truth thereof.

*Eighth.*—Deny the allegations contained in the paragraph marked "Twenty-fourth" in said "Answer," except that complainants admit the New York Finance Company commenced business on or about the first day of October, 1901.

*Ninth.* — Answering the paragraphs marked "Twenty-fifth," "Twenty-sixth," "Twenty-seventh," "Twenty-eighth" and "Twenty-ninth," in said "Answer," complainants deny each and every allegation contained therein; that no loan of \$2150, or any amount whatever, was, on or about the 25th day of February, 1902, made by the said New York Finance Company to Conrad Morris Braker. On the contrary, complainants aver that on the 25th day of February, 1902, Conrad Morris Braker sold absolutely to the said New York Finance Company, his contingent interest in his father's estate, to the extent of Thirty-five Thousand (\$35,000) Dollars, as is fully averred and set forth in complainants' Bill.

60 Complainants' Reply to Answer of Respondent

*Tenth.*—Admit the allegations contained in the paragraph marked "Thirtieth" of said "Answer," except that complainants deny that they have knowledge or information as to the allegation that the assignment of February 25th, 1902, was without the knowledge of the respondent sufficient to form a belief as to the truth thereof, and ask that if the same be competent, material and relevant, due proof thereof be made.

*Eleventh.*—Deny the allegations contained in the paragraph marked "Thirty-first" of said "Answer."

*Twelfth.*—Answering the allegations contained in the paragraph marked "Thirty-second" of said "Answer," deny that they have knowledge or information thereof sufficient to form a belief as to the truth thereof, and are advised by counsel, believe and therefore say that the same are not material, competent and relevant. And complainants allege further that any attempted election by Conrad Morris Braker to avoid the assignment averred in the Bill of Complaint heretofore filed herein, to have been made by him, of the interest bequeathed to him under the "Fifteenth" and "Sixteenth" paragraphs of the will of Conrad Braker, Jr., deceased, are void and of none effect.

*Thirteenth.*—Answering the allegations contained in the paragraph marked "Thirty-third" of said "Answer," complainants deny that they have knowledge thereof sufficient to form a belief as to the truth thereof, but ask that if the same are material, relevant and competent, due proof thereof be made.

*Fourteenth.*—Answering the allegations contained in the paragraph marked "Thirty-fourth" of said "Answer," complainants deny that they have knowledge or information thereof sufficient to form a belief as to the truth thereof.

Complainants' Reply to Answer of Respondent 61

*Fifteenth.*—In answer to the paragraph marked "Thirty-fifth" in said "Answer," repeat averments contained in preceding paragraphs numbered First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth, and make the same a part of this their reply to the said paragraph numbered "Thirty-fifth" in said "Answer."

*Sixteenth.*—Deny the allegations contained in the paragraph marked "Thirty-sixth" of said "Answer," except that complainants aver that they have no knowledge or information thereof sufficient to form a belief as to the truth of the allegation that the said respondent, Conrad Morris Braker, was, on the 25th day of February, 1902, a resident of Stamford, in the State of Connecticut.

*Seventeenth.*—Deny the allegations contained in the paragraph marked "Thirty-seventh" of said "Answer."

*Eighteenth.*—Deny the allegations contained in the paragraph marked "Thirty-eighth" of said "Answer," except that complainants admit that Conrad Morris Braker is not a lawyer.

*Nineteenth.*—Deny the allegations contained in the paragraph marked "Thirty-ninth" of said "Answer."

*Twentieth.*—Deny the allegations contained in the paragraph marked "Fortieth" of said "Answer."

*Twenty-first.*—Deny the allegations contained in the paragraph marked "Forty-first" of said "Answer."

*Twenty-second.*—Deny the allegations contained in the paragraph marked "Forty-second" in said "Answer."

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*Twenty-third.*—Admit the allegations contained in the paragraph marked "Forty-third" of said "Answer," except that complainants deny that they have knowledge or information of the allegation that the assignment referred to in the said paragraph was without the knowledge of the said Conrad Morris Braker sufficient to form a belief as to the truth thereof, but ask that if the same be competent, relevant and material, due proof thereof be made.

*Twenty-fourth.*—Deny the allegations contained in the paragraph marked "Forty-fourth" of said "Answer."

*Twenty-fifth.*—Deny the allegations contained in the paragraph marked "Forty-fifth" of said "Answer," except that the complainants admit that on or about the 14th day of May, 1912, the New York Finance Company executed and delivered to complainants an assignment of all of the equity of redemption, right, title and interest whatsoever which the said New York Finance Company had in the interest of Twenty Thousand (\$20,000) Dollars in the estate of Conrad Braker, Jr., deceased, referred to and mentioned in the said paragraph marked "Forty-fifth" in said "Answer."

*Twenty-sixth.*—Answering the allegations contained in the paragraph marked "Forty-six" of said "Answer," complainants deny that they have knowledge thereof sufficient to form a belief as to the truth thereof, and are advised by counsel, believe and therefore say that the same are not material, competent and relevant. And complainants further allege that any attempted election by Conrad Morris Braker to avoid the assignment referred to in the Bill of Complaint heretofore filed herein to have been made by him, of the interest bequeathed to him under the "Fifteenth"

Complainants' Reply to Answer of Respondent 63

and "Sixteenth" paragraphs of the Will of Conrad Braker, Jr., are void and of none effect.

*Twenty-seventh.*—Answering the allegations contained in paragraph marked "Forty-seventh" of said "Answer," complainants deny that they have knowledge thereof sufficient to form a belief as to the truth thereof, but ask that if the same be material, competent and relevant, due proof thereof be made.

*Twenty-eighth.*—In answer to the offer and tender of the respondent, Conrad Morris Braker, set forth in the "Forty-eighth" paragraph of said "Answer," complainants aver that said Conrad Morris Braker is now falsely and fraudulently pretending and alleging that the absolute sale and assignment of his interest in the estate of his father, Conrad Braker, Jr., averred to have been sold and assigned by him to the New York Finance Company, as set forth in the above Bill of Complaint, was in effect security for a loan, and is endeavoring to secure the aid of this Court in forcing complainants to deliver this assignment up for cancellation upon repayment of the purchase price or of a part of the purchase price thereof.

*Twenty-ninth.*—Answering the allegations contained in the paragraph marked "Forty-ninth" of said "Answer," complainants deny that they have knowledge thereof sufficient to form a belief as to the truth thereof, and ask that if the same be relevant, competent and material, due proof thereof be made.

*Thirtieth.*—Deny the allegations contained in the paragraph marked "Fiftieth" of said "Answer."

*Thirty-first.*—Complainants aver and show that the "Answer" of the said Conrad Morris Braker attempts to set up a counter-claim or cross-bill, and asks as affirmative relief that (a) the said conveyance and

#### 64 Complainants' Reply to Answer of Respondent

assignment by the said Conrad Morris Braker to the New York Finance Company dated February 25th, 1902, be annulled and cancelled; or (b) be reformed into a mortgage.

Complainants show to your Honorable Court that it is provided by Section 397 of the Code of Civil Procedure of the State of New York that a cause of action upon which an action cannot be maintained under the Statute of Limitations of the State of New York cannot be effectually interposed as a defense or counter-claim; and that the counter-claim or defenses attempted to be set up by the said Conrad Morris Braker in his said "Answer" constitute alleged causes of action which are barred by the Statute of Limitations of the State of New York as appears from the following facts:

Insofar as the counter-claim or defense or prayer for affirmative relief is based on the ground of the penalty provided by the laws of the State of New York for usury, the said Conrad Morris Braker is barred by the third paragraph of Section 383 and by Section 388 of the Code of Civil Procedure in the State of New York because the aforesaid conveyance and assignment and the transaction relating thereto were concluded on or about the 25th day of February, 1902, a period of more than three years and a period of more than ten years prior to the institution of this action and prior to the filing the the "Answer" or Cross-bill herein; and any and all right of action vested in Conrad Morris Braker to obtain the cancellation of said conveyance or assignment on the ground of usury, even if there ever was any such right of action, which complainants deny, accrued on or about the 25th day of February, 1902, and that no action has ever been begun by the said Conrad Morris Braker to cancel or to have declared void the said assignment.

Complainants' Reply to Answer of Respondent 65

In so far as the counter-claim or defense or prayer for affirmative relief is based on the ground that the sale of the legacy described in the Bill of Complaint was in reality a mortgage, the said Conrad Morris Braker is barred by the Statute of Limitations of the State of New York, contained in Title II of Chapter 4 of the Code of Civil Procedure of the State of New York, and particularly by Section 388 thereof, because the aforesaid conveyance and assignment and the transaction relating thereto were concluded on or about February 25th, 1902, a period of more than ten years prior to the institution of this suit, and prior to the filing of the "Answer" or Cross-bill herein; and any and all right of action vested in Conrad Morris Braker to reform the said conveyance or assignment on the ground that the same was in reality a mortgage, even if there ever was any such right of action, which the complainants deny, accrued on or about the 25th day of February, 1902, and that no action has ever been begun by the said Conrad Morris Braker to reform the said instrument, or to have the same declared operative as a mortgage.

*Thirty-second.*—Deny the allegations contained in the paragraph numbered "Fifty-first" of said "Answer."

*Thirty-third.*—Deny the allegations contained in the paragraph marked "Fifty-second" in said "Answer."

*Thirty-fourth.*—Deny the allegations contained in the paragraph marked "Fifty-third" of said "Answer."

WHEREFORE, complainants pray that in so far as said "Answer" asks for affirmative relief, the same may be dismissed, and that the relief prayed for in the



Bill heretofore filed in this cause be granted to the complainants.

MILLER, KING, LANE & TRAFFORD,  
PERRY D. TRAFFORD,

*Solicitors for Complainants.*

Office and Post Office Address,  
No. 80 Broadway,  
Borough of Manhattan,  
New York City, N. Y.

DICKSON, BEITLER & McCOUCH,  
PERRY D. TRAFFORD,  
*Of Counsel.*

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**NOTICE OF MOTION OF DEFENDANT, BRAKER,  
FOR DISMISSAL OF BILL.**

(Filed March 27th, 1914.)

SIRS:

PLEASE TAKE NOTICE, that upon all the pleadings and proceedings had herein, I shall move this Court before the judge assigned to hear motions on Friday, the 27th day of March, 1914, at the Post Office Building, Borough of Manhattan, City of New York, at 10.30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order dismissing the bill of complaint herein, with costs.

Dated, March 21, 1914.

Yours, etc.,

SAFFORD A. CRUMMEY,  
*Solicitor for Respondent,  
Conrad Morris Braker.*

To Miller, King, Lane & Trafford, solicitors for complainants.

Notice of Motion for Decretal Order of Dismissal 67

**NOTICE OF MOTION BY DEFENDANT, FLETCHER, AS TESTAMENTARY TRUSTEE FOR DECRETAL ORDER OF DISMISSAL.**

(Filed March 27th, 1914.)

Gentlemen:

You will please take notice that upon the bill of complaint and the answer herein, a motion will be made before one of the justices of this court, at a term of this court for the hearing or motions, to be held at the court room thereof, No. 66, U. S. General Post Office Building (or such other room as may be designated), in the City of New York, Borough of Manhattan, at 10.30 A. M., on the 27th day of March, 1914, or as soon thereafter as counsel may be heard for a decretal order dismissing this suit with costs against the plaintiffs, on the ground that this court has not cognizance of the suit, or for such other order in the premises as may be just.

Dated, March 2, 1914.

Yours, etc.,

WILLIAM P. S. MELVIN,

*Attorney for Defendant,*

*A. B. Fletcher.*

165 Broadway,

New York City, N. Y.

To Miller, King, Lane & Trafford, Esqs., attorneys  
for plaintiffs.

**ORDER DISMISSING SUIT.**

(Filed March 27, 1914.)

At a Stated Term of the District Court of the United States for the Southern District of New York, held at the General Post Office Building, in the City and County of New York, on the 27th day of March, 1914.

Present: HON. E. HENRY LACOMBE,  
*Judge.*

THE PROVIDENT LIFE AND TRUST COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, and a citizen of the said State of Pennsylvania, and CATHERINE STEWART WOOD, a citizen of the State of Pennsylvania, as executors under the Last Will and Testament of William Brewster Wood, deceased, also of the City of Philadelphia, State of Pennsylvania, and a late citizen of the said State of Pennsylvania,  
Plaintiffs,  
against

AUSTIN B. FLETCHER, as Testamentary Trustee of Conrad Morris Braker, under the Last Will and Testament of Conrad Braker, Jr., deceased, and a citizen of the State of New York, and CONRAD MORRIS BRAKER, a citizen of the State of New York,  
Defendants.

Equity 10.  
Page 111.

On reading and filing the notice of motion on behalf of the several defendants herein for the dismissal of the suit on the ground that this District Court has

no cognizance of the same in that the suit could not be prosecuted in this Court, if no assignment had been made, the court having considered the bill of complaint and the answers herein on the part of said defendants.

Now, after hearing Mr. William P. S. Melvin, counsel for said defendant, Austin B. Fletcher, as testamentary trustee, etc., and Safford A. Crummey, counsel for defendant, Conrad Morris Braker, in favor of the motion, and Mr. Wolcott G. Lane, of counsel for the plaintiffs in opposition.

IT IS ORDERED that this suit be and the same is hereby dismissed with costs to each defendant to be taxed by the Clerk.

E. HENRY LACOMBE,

U. S. C. J.

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### **APPEAL AND ALLOWANCE.**

(Filed March 27th, 1914.)

*To the Honorable E. Henry Lacombe, District Judge  
of the Southern District of New York:*

Your petitioners, The Provident Life & Trust Company, a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, and Catherine Stewart Wood as Executors under the Last Will and Testament of William Brewster Wood, deceased, the above named plaintiffs, conceiving themselves aggrieved by the Decree made and entered on the 27th day of March, 1914, in the above entitled cause, by which said Decree the Bill filed by your petitioners was dismissed, on the sole ground that upon all the pleadings and proceedings had therein no jurisdiction of the District Court of the United States existed, and the suit was dismissed for that reason alone, do hereby appeal from said Order and Decree to the Supreme Court of the United States, as authorized by

Section 238 of the Judicial Code, for the reasons specified in the Assignments of Error filed herewith, and your petitioners pray that this appeal may be allowed, and that a Transcript of the Record, proceedings and papers upon which the said Decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 27th day of March, 1914.

MILLER, KING, LANE & TRAFFORD,  
*Attorneys for Petitioners.*

The foregoing claim of appeal is allowed, Bond to be entered in the sum of \$250.00 to be approved by the Clerk.

Dated this 27th day of March, 1914.

E. HENRY LACOMBE,  
*United States Circuit Judge.*

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**CERTIFICATE UNDER SECTION 238 OF THE  
JUDICIAL CODE.**

(Filed March 27th, 1914.)

In this cause I HEREBY CERTIFY that this appeal is granted solely, and that the order of dismissal of the Bill herein made is based solely on the ground that no jurisdiction of the District Court existed; that this question has been so determined by me on the ground that one of the defendants herein was the assignor of an interest in a decedent's estate, which interest was assigned to the complainants herein, and that the said defendant assignor is a citizen of the same State as his co-defendant.

This Certificate is made conformably to Section 238 of the Judicial Code.

E. HENRY LACOMBE,  
*United States Circuit Judge.*

**ASSIGNMENTS OF ERROR.**

(Filed March 27th, 1914.)

Your petitioners, The Provident Life & Trust Company and Catherine Stewart Wood, as Executors under the Last Will and Testament of William Brewster Wood, deceased, pray an appeal from the final Decree of this Court to the Supreme Court of the United States, and assign for error:

*First.*—That the learned District Court erred in dismissing the Bill in the above entitled cause for lack of jurisdiction.

*Second.*—The learned District Court erred in refusing to maintain jurisdiction of the above entitled cause.

MILLER, KING, LANE & TRAFFORD,  
*Attorneys for Petitioners.*

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**CITATION AND SERVICE.**

(Filed April 2, 1914.)

UNITED STATES OF AMERICA, ss.:

*To Austin B. Fletcher as Testamentary Trustee of Conrad Morris Braker under the Last Will and Testament of Conrad Braker, Jr., deceased, and a citizen of the State of New York, and Conrad Morris Braker, a citizen of the State of New York,*  
Greeting:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at a Supreme Court of the United States to be holden at the City of Washington within 30 days from the date of this writ, pursuant to an appeal duly allowed by the District Court of the United States for

74 Stipulation as to Transcript of Record as Printed

**STIPULATION AS TO TRANSCRIPT OF RECORD  
AS PRINTED.**

(Filed April 18th, 1914.)

It is hereby stipulated and agreed by and between the Complainants-Appellants and the Defendants-Appellees in the above-entitled action, binding upon the parties to said action, that the foregoing printed copy is a true transcript of the record as agreed on by the parties to said action.

Dated April 18th, 1914.

MILLER, KING, LANE &  
TRAFFORD,

*Attorneys for Complainants-Appellants.*

WILLIAM P. S. MELVIN,  
*Attorney for Defendant-Appellee Austin B. Fletcher, as Testamentary Trustee, etc.*

SAFFORD A. CRUMMEY,  
*Attorney for Defendant-Appellee Conrad Morris Braker.*

UNITED STATES OF AMERICA,  
SOUTHERN DISTRICT OF NEW YORK, } ss.:

THE PROVIDENT LIFE AND TRUST COMPANY,  
a corporation organized and existing  
under and by virtue of the laws of the  
State of Pennsylvania, and a citizen of  
the said State of Pennsylvania, and  
CATHERINE STEWART WOOD, a citizen of  
the State of Pennsylvania, as Ex-  
ecutors under the Last Will and Tes-  
tament of William Brewster Wood,  
deceased, also of the City of Philadel-  
phia, State of Pennsylvania, and a late  
citizen of the said State of Pennsyl-  
vania,

Equity-10  
No. 111.

against

AUSTIN B. FLETCHER, as Testamentary  
Trustee of Conrad Morris Braker,  
under the Last Will and Testament of  
Conrad Braker, Jr., deceased, and a citi-  
zen of the State of New York, and  
CONRAD MORRIS BRAKER, a citizen of the  
State of New York.

I, ALEXANDER GALCHRIST, JR., Clerk of the District  
Court of the United States of America for the Southern  
District of New York, do hereby certify that the fore-  
going is a correct transcript of the record of the said  
District Court in the above-entitled matter as agreed  
on by the parties.

In Testimony Whereof, I have caused the seal  
of the said Court to be hereunto affixed,  
at the City of New York, in the Southern  
(Seal) District of New York, this 18th day of  
April, in the year of our Lord one thou-  
sand nine hundred and fourteen and of  
the Independence of the said United  
States the one hundred and thirty-eighth.

ALEXANDER GILCHRIST, JR.,  
Clerk.



No. 455

October Term, 1914.

Office Supreme Court, U. S.

FILED

SEP 29 1914

CLERK

IN THE  
**Supreme Court of the United States**

THE PROVIDENT LIFE AND TRUST COMPANY and  
CATHERINE STEWART WOOD, as Executors Under  
the Last Will and Testament of WILLIAM BREWSTER  
WOOD, Deceased,

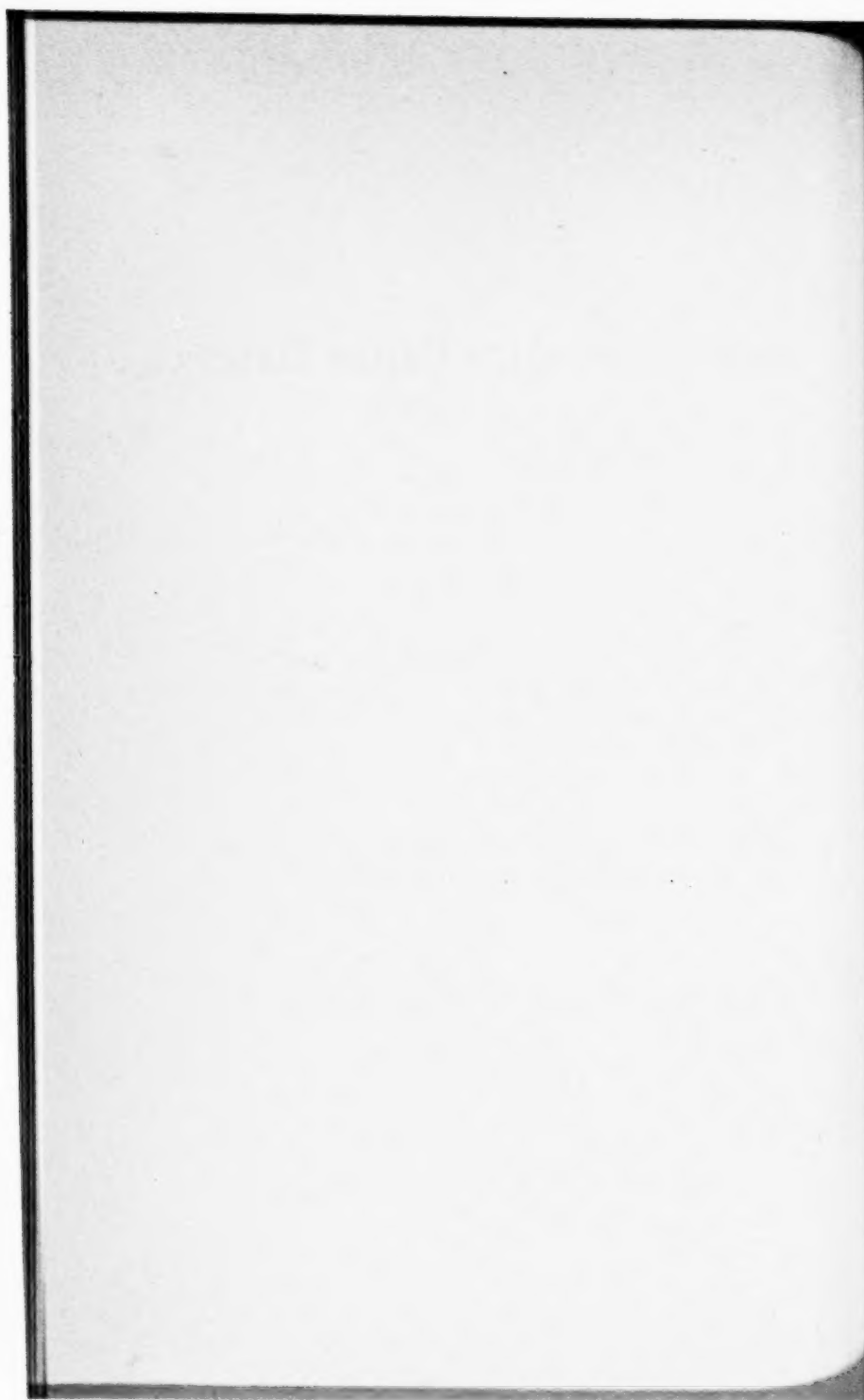
v.s.

AUSTIN B. FLETCHER, as Testamentary Trustee of  
CONRAD MORRIS BRAKER Under the Last Will and  
Testament of CONRAD BRAKER, Jr., Deceased, and  
CONRAD MORRIS BRAKER.

Appeal From the District Court of the United States  
for the Southern District of New York.

**Brief on Behalf of Appellants.**

PERRY D. TRAFFORD,  
H. GORDON MCCOUCH,  
*Solicitors for Appellants.*



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IN THE  
Supreme Court of the United States.

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October Term, 1914. No. .

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THE PROVIDENT LIFE AND TRUST COMPANY  
AND CATHERINE STEWART WOOD, AS EXEC-  
UTORS UNDER THE LAST WILL AND TESTAMENT OF  
WILLIAM BREWSTER WOOD, DECEASED,

*v.*

AUSTIN B. FLETCHER, AS TESTAMENTARY TRUSTEE  
OF CONRAD MORRIS BRAKER UNDER THE LAST WILL  
AND TESTAMENT OF CONRAD BRAKER, JR., DECEASED,  
AND CONRAD MORRIS BRAKER.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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BRIEF ON BEHALF OF APPELLANTS.

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STATEMENT OF THE CASE.

This case is before the Court on the sole question of the jurisdiction of the District Court under Section 238 of the Judicial Code.

The bill in equity was filed by appellants against Austin B. Fletcher as Testamentary Trustee of Conrad Morris Braker under the Last Will and Testament of Conrad Braker, Jr., deceased, and against Conrad Morris Braker, defendants below, appellees.

The bill (Record, pp. 1-11) showed that Conrad Morris Braker is entitled to receive one-half of a re-

siduary estate under the Sixteenth clause of the Will of Conrad Braker, Jr., upon attaining fifty-five years of age; that he had attained that age, and that the one-half interest to which he then became entitled amounted to approximately the sum of \$120,000. That Conrad Morris Braker had sold his interest under the said Sixteenth clause of the said Will to the amount or extent of \$20,000 to the New York Finance Company. That the New York Finance Company had assigned this interest in the legacy as collateral security for a promissory note of \$15,000, upon which interest at the rate of six per cent. has been unpaid from January 5th, 1907 (Record, p. 31). Therefore, at the time of the filing of the Bill of Complaint, namely February 5th, 1913, more than the \$20,000 share in the legacy assigned as collateral security had become due, since the interest for that period amounts to \$5475. That after the execution and delivery of the said note to William Brewster Wood, the said William Brewster Wood died, and complainants became executors under his last Will and Testament. That on May 14th, 1912, the New York Finance Company assigned to complainants a formal release of the equity of redemption which as the maker of said note it had in the \$20,000 share in the legacy. The principal averment of the Bill was that title to the said share mentioned in the said release amounted to \$20,000, and prayer was made that title thereto should be decreed to be in the complainants, and the defendant Austin B. Fletcher be directed to pay over to them the said sum.

William Brewster Wood and complainants were citizens of the State of Pennsylvania, and Austin B. Fletcher, Trustee, and Conrad Morris Braker, were citizens of the State of New York at the time of the filing of the Bill. Conrad Morris Braker, a defendant, had been the assignor of a portion of the residuary

estate of his father, held by the other defendant as Trustee, having assigned the same to one William Brewster Wood, the complainants' testator.

The learned District Judge dismissed the bill, and his certificate (Record, p. 70) shows that the Bill was dismissed on the ground that Conrad Morris Braker, the defendant assignor was a citizen of the same State as Austin B. Fletcher, the defendant Trustee.

From the decree dismissing the Bill this appeal was taken in accordance with Section 238 of the Judicial Code.

## SPECIFICATIONS OF ERROR.

*First.*—That the learned District Court erred in dismissing the Bill in the above-entitled cause for lack of jurisdiction.

*Second.*—The learned District Court erred in refusing to maintain jurisdiction of the above-entitled cause.



## ARGUMENT.

The question presented is an extremely simple one, and has been already determined by this Court in the case of *Ingersoll v. Coram*, 211 U. S. 335. Therein this Court said:

“It is charged that the right of the petitioner’s intestate was derived from Root, and as he, it is further contended, could not have sued to establish his right to a share in the funds of the administrator, the latter and he being citizens of Montana, that the petitioner was equally disqualified to establish and recover Root’s share of the property. The argument is that she is seeking to enforce a right of Root against the administrator arising on an equitable assignment by Root to her intestate, and she is therefore, it is said, suing to recover as assignee of a chose in action upon which the assignor could not sue, because his citizenship is the same as that of the administrator in Massachusetts. Sec. 629, Rev. Stat. There are several answers to the contention. It is certainly very disputable if an interest in a distributive share of an estate is within the statute. Again, she is suing primarily on the obligation of Root to her intestate to secure which a lien was given on Root’s distributive share; and besides, again, she sues as administratrix, and she is a citizen of a different State from Leyson. *Sere v. Pitot*, 6 Cranch, 333; *Chappedelaine v. Decheneaux*, 4 Cranch, 308; *Bushnell v. Kennedy*, 9 Wall. 387; *Coal Company v. Blatchford*, 11 Wall. 172; *Rice v. Houston*, 13 Wall. 66” (at page 361).

It will be shown, therefore, first, that this case controls the jurisdictional questions presented by the case at bar; and secondly, that the decision in *Ingersoll v. Coram* followed the previous principles already enunciated by the Federal Courts.

**First.—The Decision in *Ingersoll v. Coram* is Decisive of the Jurisdictional Questions Raised in the Case at Bar.**

In that case Root was the claimant to a share in the estate of Davis. Root entered into an agreement with Ingersoll which amounted to an equitable assignment of his share as a fee for professional services. Ingersoll died, and his widow as administratrix brought suit against Leyson as administrator of the estate of Davis situate in Massachusetts. Leyson and Root were citizens of Montana. Ingersoll and his administratrix were citizens of New York. The objection was made that the administratrix was suing to enforce a right of Root, the assignor, against the administrator arising on an equitable assignment by Root to her intestate, the assignee, and that therefore it amounted to a suit to recover as assignee of a chose in action upon which the assignor could not sue, because both the assignor and the defendant administrator were citizens of Montana. The facts in the case at bar so far as the question of jurisdiction is concerned, are parallel with the facts in *Ingersoll v. Coram*.

Davis=Conrad Braker, Jr., the original decedent.

Root=Conrad Morris Braker, the party interested in the estate of the decedent, and assignor.

William Brewster Wood=Ingersoll, the assignee of the party interested in the decedent's estate.

Mrs. Ingersoll, the administratrix of Ingersoll, and plaintiff=Mrs. Wood and the Provident Life & Trust Company, executors of William Brewster Wood, and plaintiffs.

Leyson, administrator of Davis, defendant=Fletcher, Trustee of Conrad Morris Braker, defendant.

The Montana citizenship of Leyson and Root=the New York citizenship of Conrad Morris Braker and Fletcher, Trustee.

The New York citizenship of Ingersoll and his administratrix=the Pennsylvania citizenship of Mr. Wood and Mrs. Wood and the Provident Life & Trust Company, executors.

The parallel between the two cases is therefore complete and decisive.

In *Brown v. Fletcher*, 206 Federal, 461, now pending in this Court on certiorari, the Circuit Court of Appeals for the Second Circuit attempted to distinguish that case by saying:

“The complainants are not asserting a lien in their own right upon Braker’s interest in the decedent’s estate, as was the case in *Ingersoll v. Coram*, 211 U. S. 336, but are asserting Braker’s title to the sum of \$10,000 to which they say they have succeeded.”

While it is true that in the syllabus to *Ingersoll v. Coram*, the legal effect of the agreement, made with Robert G. Ingersoll by Root and Coram, is referred to as constituting “a lien on the distributive share of an heir of defendant’s intestate,” all through the opinion the interest is referred to indifferently as a lien or an equitable assignment. Thus, at page 361, in the opinion of the Court, quoted above, the right sought to be enforced by the administrator is spoken of as “arising on an equitable assignment by Root to her intestate”; and on page 368 the Court cites with approval in support of its findings *Fourth Street Bank v. Yardley*, 165 U. S. 634, where it was held, under the particular circumstances of the case, that, contrary to the usual rule, the check there given operates as an appropriation or *equitable assignment* of a fund in the hands of the drawee. Mr. Chief Justice White, in delivering the opinion in that case, said:

“The deduction arises that as it cannot be reasonably conceived that the loan would have been made without the reference to an *assignment of the particular fund*, from which loan the hope of immediate payment was to be reasonably expected, the parties must have and did intend to create a particular appropriation charge or lien on the property, upon the faith of which they both dealt.”

It is therefore submitted that the distinction attempted by the learned Circuit Court of Appeals for the Second Circuit is without a difference, because the lien referred to in *Ingersoll v. Coram* was not a statutory lien or a lien arising simply out of the employment, but resulted from an instrument of writing, the legal effect of which was to constitute an equitable assignment by Root of a portion of his distributive share in the estate of Davis, just as Braker here assigned a portion of his distributive share to Wood; Root and the Trustee of Davis's Estate, being citizens of the same State, just as Braker and Fletcher, Trustee, are in the case at bar.

There is, however, a real distinction (whether or not it be decisive) between the cases of *Brown v. Fletcher* on the one hand, and *Ingersoll v. Coram* and the case at bar on the other, in the fact that in *Brown v. Fletcher* the suit was not by an administrator or executor, whereas, both in *Ingersoll v. Coram*, and in the suit at bar, the suit was by an administrator or executor.

**Second.—The Interpretation Placed Upon the Provisions of Section 629 R. S. (Now Section 24 [1st] of the Judicial Code) by This Court in *Ingersoll v. Coram*, Followed the Principles Enunciated in the Previous Decisions of This Court.**

It will be well to consider this subject under the two heads suggested by the decision in *Ingersoll v. Coram*.

(a) An interest in a distributive share of an estate (*a fortiori* in a trust fund) is not within the Statute.

(b) The prohibition is against suits by "an assignee" and neither an administrator nor an executor are regarded as assignees within the Statute.

**A.**

**AN INTEREST IN A DISTRIBUTIVE SHARE OF AN ESTATE (*a fortiori* in a trust fund) IS NOT WITHIN THE STATUTE.**

The question here is the meaning of the phrase "chose in action" as used in the Statute. The learned District Judge in the case of *Brown v. Fletcher*, now in this Court on certiorari, in overruling the demurrer of the defendant, held that "the interest of a *cestui que trust* in a sum of money held for him by the trustee" was not "what the Statute meant by a 'chose in action.'" He cited the case of *Croxall v. Shererd*, 5 Wall. 268, wherein the question was as to the efficacy of a deed by a *cestui que trust* and the holding of this Court was that the *cestui que trust* was "actually seized of the freehold" and that the deed was valid. The learned District Judge then added:

"In respect of personal property also the *cestui que trust* is entitled to possession of the *res* unless its nature precludes; in short, he is entitled at least on a case like this to all absolute interest save the legal title and actual possession. It would

be a piece of doubtful pedantry, I think, in view of the usual meaning of the word 'chose in action' to apply it to a relation like that created by the fourteenth paragraph of the will."

In Eighteenth Century Common Law, at the time of the passage of the Judiciary Act of 1789, it is very clear that the term "chose in action" meant a right growing out of contract. It is true that subsequently the phrase came to be applied to any kind of right of action whether tortious or contractual in its origin. Many of the cases cited in the brief of counsel for the appellees on the motion to advance are illustrative of this modern explanation of the phrase. The question at bar is, however, not what it means or may mean today but what it meant in the Judiciary Act as interpreted by the decisions in this Court.

In *Deshler v. Dodge*, 16 How. 622, an action of replevin was brought by an assignee of a package of bank notes for their recovery. The Court held that such a suit was maintainable, and said:

"It is admitted the assignors in this case could not have maintained the suit in the federal courts. We are of opinion that this clause of the Statute has no application to the case of a suit by the assignee of a chose in action to recover possession of the thing in specie, or damages for its wrongful caption or detention; and that it applies only to cases in which the suit is brought to recover the contents, or to enforce the contract contained in the instrument assigned" (at page 630).

In *Bushnell v. Kennedy*, 9 Wall. 387, this Court discussed the question, and said:

"It has been decided, where the assignment was by will, that the restriction is not applicable to the representative of the decedent. And it has also been determined that the assignee of a chose in action may maintain a suit in the Circuit Court

to recover possession of the specific thing, or damages for its wrongful caption or detention, though the court would have no jurisdiction of the suit if brought by the assignors. And it has recently been very strongly argued that the restriction applies only to contracts 'which may be properly said to have contents'; 'not mere naked rights of action founded on some wrongful act, some neglect of duty to which the law attaches damages, but rights of action founded on contracts which contain within themselves some promise or duty to be performed' " (at pages 391 and 392).

In *Ambler v. Eppinger*, 137 U. S. 480, the above quoted suit was to recover the value of certain trees and logs alleged to have been converted. The suit was by an assignee. This court sustained the jurisdiction. The preceding cases are considered, and the meaning of the phrase "chose in action" as it was understood at the time of the adoption of the Judiciary Statute is adopted as its proper interpretation.

This Court said:

"All of the decisions of this Court are in accord with this interpretation of the Statute."

In *Bertha Zinc & Mineral Company v. Vaughan*, 88 Fed. 566, a daughter of a decedent who had died intestate, assigned all of her interest in the estate, which by several *mesne* assignments passed to a corporation, the complainant. It filed its Bill against the administrator to recover the daughter's distributive share. The defendants were all citizens of Virginia, as well as the daughter, and the complainant was a New Jersey corporation.

Said the Court:

"It (the case under discussion) is not founded on a contract, nor brought to enforce a contract, but to enforce obligations incurred by administra-

tors of an estate in their official capacity, by a failure to properly discharge their fiduciary duties. A non-resident assignee, bringing suit of this character, is entitled to have the same heard in this Court."

It is true that in this case there had been a charge of dissipation of assets and the Bill was against the administrators for a devastavit and to recover the assigned interest in the estate. But certainly it is immaterial whether the recovery was of money in the hands of the administrators or of money which should have been in the hands of the administrators.

It is therefore respectfully submitted that the opinion expressed by Mr. Justice McKenna in delivering the opinion of this Court in *Ingersoll v. Coram* that an interest in a distributive share of an estate was not within the Statute, follows the principle of the decisions of this Court entirely apart from the language of the Act of 1875, repealed by the Act of 1887. It would seem obvious that an interest in an estate is not a contract such as Congress had in mind in passing the Act. Certainly, the interest of a *cestui que trust* in a trust fund is far less of a "chose in action" than a distributive share in an estate.

#### B.

THE PROHIBITION IS AGAINST SUITS BY "AN ASSIGNEE"  
AND NEITHER AN ADMINISTRATOR NOR AN EXECUTOR  
ARE REGARDED AS ASSIGNEES WITHIN THE STATUTE.

The decision in *Ingersoll v. Coram* only recognized the expressed decisions of this Court.

In *Chappedelaine v. Dechenaux*, 4 Cranch, 306, an objection to the maintenance of the suit was interposed, but Mr. Chief Justice Marshall held that the



suit was maintainable because it was by an executor, and that jurisdiction of the testators was unimportant. This decision was quoted by Mr. Chief Justice Marshall in *Sere v. Pitot*, 6 Cranch, 332, and the meaning of the Act was explained. Mr. Chief Justice Marshall concluded by saying:

“The representatives of a deceased person are not usually designated by the term ‘assignees,’ and are therefore not within the word of the Act” (at page 336).

In *Rice v. Houston*, 13 Wall. 66, on an agreed state of facts, this Court held:

“Although in controversies between citizens of different states, it is the character of the real and not that of the nominal parties to the record which determines the question of jurisdiction, yet it has been repeatedly held by this Court that suits can be maintained in the Circuit Court by executors or administrators if they are citizens of a different state from the party sued, on the ground that they are the real parties in interest, and succeed to all the rights of the testator or intestate by operation of law” (at page 67).

The decision in *Ingersoll v. Coram* simply applies the same legal principle to plaintiff administrators in a case where there have been intermediate assignees prior to the death of the party represented by such administrator. It is submitted that this is an immaterial point, and that since an administrator is not in any sense of the term, as Mr. Chief Justice Marshall pointed out, an “assignee” it is immaterial whether or not there may have been several *mesne* assignments.

The fact that the New York Finance Company executed a release to the executors of their theoretical equity of redemption is wholly immaterial, since at the time of the beginning of the suit, the amount due on the

note of \$15,000 amounted to more than the distributive share of the legacy. Therefore if the suggestions made by the learned counsel for the appellee in his brief on the motion to advance had otherwise merit, such question need not be discussed, since the averments with respect to the release are surplusage.

In conclusion, it is respectfully urged that the facts and the decision of this Court in *Ingersoll v. Coram* have foreclosed the question of jurisdiction as applicable to the case at bar. But if any distinction, unperceived by counsel for appellants, exists, it is submitted that a suit against a trustee to establish a lien upon a distributive share in a decedent's estate can hardly be described as a suit to recover the contents of a chose in action, and that the trend and character of the decisions of this Court establish the principle that such suit is without the Statute.

PERRY D. TRAFFORD,  
H. GORDON McCOUCH,  
*Solicitors for Appellants.*

No. ~~4025~~ 455

October Term, 1913

Office Supreme Court, U. S.

FILED

MAY 8 1914

JAMES D. MAHER  
CLERK

IN THE

# Supreme Court of the United States

**PROVIDENT LIFE AND TRUST COMPANY,  
AND CATHERINE STEWART WOOD,**  
Executors of the Estate of William  
Brewster Wood, Deceased,

*Appellants,*

*VERSUS*

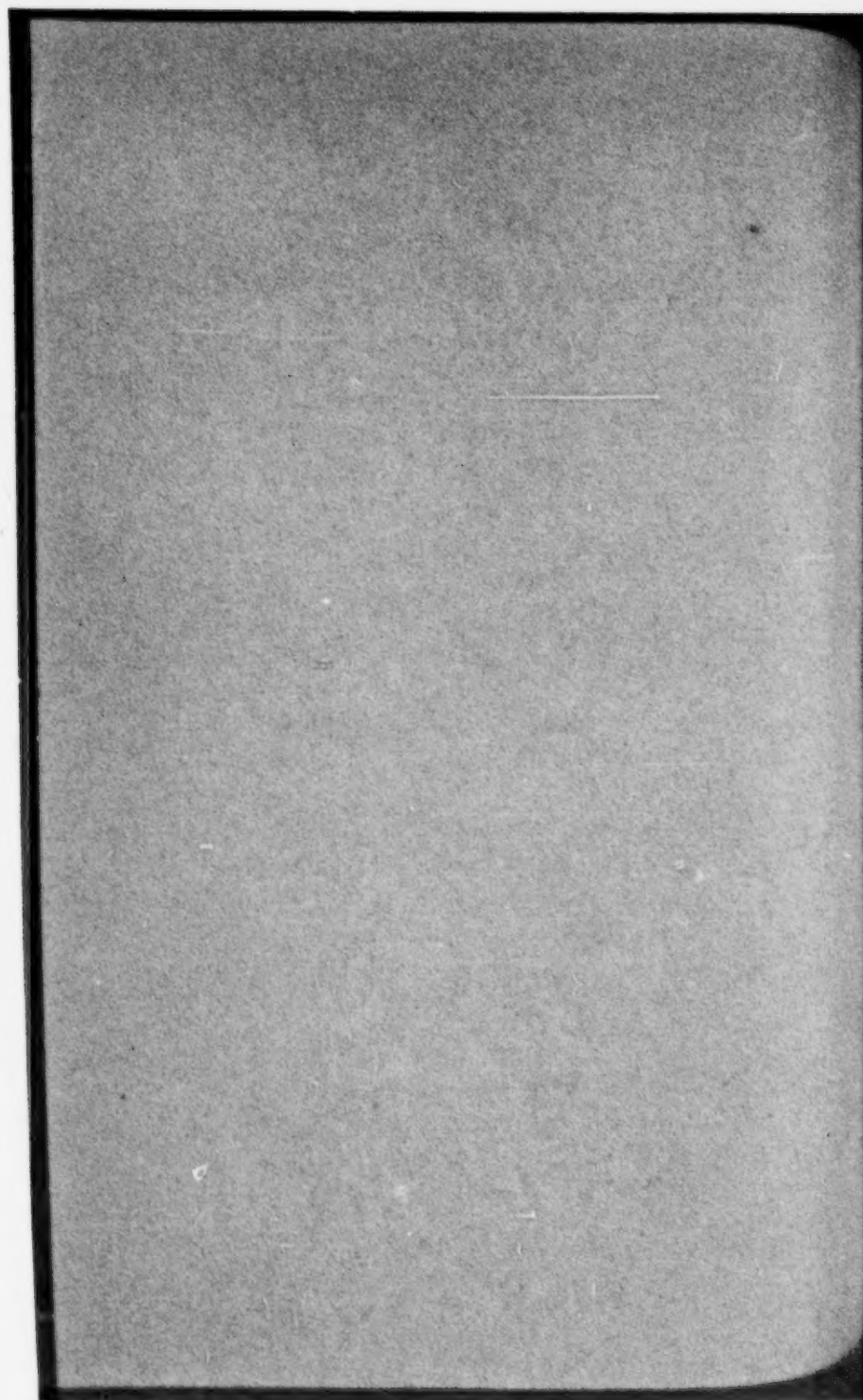
**AUSTIN B. FLETCHER, as Testamentary  
Trustee Under the Last Will and Testament  
of Conrad Braker, Jr., Deceased, and Conrad  
Morris Braker,**

*Appellees.*

Appeal from the District Court of the United States  
for the Southern District of New York.

## REPLY BRIEF ON BEHALF OF APPELLANTS.

**PERRY D. TRAFFORD,  
H. GORDON MCCOUCH,**  
*Solicitors for Appellants.*



IN THE  
Supreme Court of the United States.

---

PROVIDENT LIFE & TRUST COMPANY AND  
CATHERINE STEWART, EXECUTORS OF THE  
ESTATE OF WILLIAM BREWSTER WOOD, DECEASED,  
*Appellants,*

*v.*

AUSTIN B. FLETCHER, AS TESTAMENTARY TRUSTEE  
OF CONRAD MORRIS BRAKER, UNDER THE LAST WILL  
AND TESTAMENT OF CONRAD BRAKER, JR., DECEASED,  
AND CONRAD MORRIS BRAKER,  
*Appellees.*

---

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK.

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REPLY BRIEF ON BEHALF OF THE  
APPELLANTS.

The brief filed on behalf of the appellees at page 15 raises a question which is not noticed in the brief heretofore filed by the appellants, and which perhaps deserves a brief explanation and comment.

The appellants were assignees as collateral security of an interest in a legacy, which interest amounted to the sum of \$20,000. The debt to which such interest was collateral was the principal sum of \$15,000 with interest at the rate of six per cent. per annum from January 5th, 1907 (Bill of Complaint, Record, p. 31). Therefore, at the time of the filing of the bill of complaint, namely, February 25th, 1913, more than the amount of the interest in the legacy assigned as col-

lateral security was due complainants by virtue of the note delivered to their testator.

On May 14th, 1912, the complainants obtained from an intermediate assignee a formal release of the equity of redemption which the maker of the aforesaid note had in the said interest in the legacy. This fact is, however, wholly immaterial in this case, since at the time of the filing of the Bill such equity had no value whatever. The bill of complaint is based, primarily, upon the claim to recover the interest in the legacy assigned as collateral security to the note of \$15,000 with interest (Bill of Complaint, paragraph 11th, Record, p. 6), and can be maintained without any reliance upon the assignment of the theoretic equity of redemption. It therefore follows that the contention of the appellants-complainants that this case is ruled by *Chappedelaine vs. Dechenaux*, 4 Cranch, 306, and similar cases is not answered by the subsequent securing by the appellants of what is really a quit-claim deed.

Respectfully submitted,

PERRY D. TRAFFORD,  
H. GORDON McCOUCH,

*Solicitors for Appellants.*

No. 1000 **455**

October Term, 1914

FILED

APR 30 1914

JAMES D. MAHER

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IN THE

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**PROVIDENT LIFE AND TRUST COMPANY,  
AND CATHERINE STEWART WOOD,**  
Executors of the Estate of William  
Brewster Wood, Deceased,

*Appellants,*

907302

**AUSTIN B. FLETCHER,** as Testamentary  
Trustee of Conrad Morris Braker, Under  
the Last Will and Testament of Conrad  
Braker, Jr., Deceased, and Conrad Morris  
Braker,

*Appellees.*

Appeal from the District Court of the United States  
for the Southern District of New York.

## Motion to Advance and Brief on Behalf of Appellants.

**PERRY D. TRAFFORD,  
H. GORDON MCCOUCH,**  
*Solicitors for Appellants.*







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PROVIDENT LIFE & TRUST COMPANY AND  
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*Appellants,*

*v.*

AUSTIN B. FLETCHER, AS TESTAMENTARY TRUSTEE  
OF CONRAD MORRIS BRAKER UNDER THE LAST WILL  
AND TESTAMENT OF CONRAD BRAKER, JR., DECEASED,  
AND CONRAD MORRIS BRAKER,  
*Appellees.*

---

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK.

---

AND NOW, this Eleventh day of May, 1914, come the Appellants, by their Counsel, and move the Court to advance the above-entitled cause for hearing in the manner prescribed by Rule Six in accordance with Rule Thirty-two of this Court, because the only question in issue is the question of the jurisdiction of the Court below, and this Appeal is taken under Section 238 of the Judicial Code.

PERRY D. TRAFFORD,  
H. GORDON McCOUCH,

*Solicitors for Appellants.*

## EASTERN DISTRICT OF PENNSYLVANIA, ss.:

RAYMOND C. KARGE, being duly sworn according to law, deposes and says; that on the eighteenth day of April, 1914, he deposited in the mail at the General Post Office, in the City of Philadelphia, Pennsylvania, a notice in the form attached hereto as Exhibit "A" and 5 copies of this Brief, addressed to Safford A. Crummey, Esq., 165 Broadway, New York City, N. Y., and to William P. S. Melvin, Esq., 165 Broadway, New York City, N. Y., the proper address of the counsel for the Appellees, duly postpaid, and that by due course of mail the said letters would reach the counsel for the Appellees on April twentieth, 1914.

RAYMOND C. KARGE.

Sworn to and subscribed before me, this Eighteenth day of April, 1914.

(Seal) GEORGE KOPPENHOEFER, JR.  
*Notary Public.*

My Commission Expires March 10th, 1917.

## EXHIBIT "A."

April 18, 1914.

Safford A. Crummey, Esq.,  
and  
William P. S. Melvin, Esq.,  
165 Broadway,  
New York City, N. Y.

Dear Sirs:—

Please take notice that on Monday, May 11th, 1914, we will present to the Supreme Court of the United States, in the matter of Provident Life & Trust Company and Catherine Stewart Wood, Executors, v. Austin B. Fletcher, Testamentary Trustee, and Conrad Morris Braker, the motion, of which the enclosed is a copy. We also hand you herewith 5 copies of the brief which will be presented with the motion.

Yours respectfully,

PERRY D. TRAFFORD,

H. GORDON McCOUCH,

*Solicitors for Appellants.*

## STATEMENT OF THE CASE.

This case is before the Court on the sole question of the jurisdiction of the District Court under Section 238 of the Judicial Code.

The bill in equity was filed by appellants against Austin B. Fletcher as Testamentary Trustee of Conrad Morris Braker under the Last Will and Testament of Conrad Braker, Jr., deceased, and against Conrad Morris Braker, defendants below, appellees.

The bill (Record, pp. 1-11) showed that Conrad Morris Braker is entitled to receive one-half of a residuary estate under the Sixteenth clause of the Will of Conrad Braker, Jr., upon attaining fifty-five years of age; that he had attained that age, and that the one-half interest to which he then became entitled amounted to approximately the sum of \$120,000. That Conrad Morris Braker had sold his interest under the said Sixteenth clause of the said Will to the amount or extent of \$20,000 and that the title in the said \$20,000 had become vested in one William Brewster Wood. That William Brewster Wood had since died, and that complainants herein were executors under his last Will and Testament. The prayer of the Bill was that title to the said \$20,000 might be decreed to be in complainants, and defendant Austin B. Fletcher, Trustee, directed to pay over the said sum.

William Brewster Wood and complainants were citizens of the State of Pennsylvania, and Austin B. Fletcher, Trustee, and Conrad Morris Braker, were citizens of the State of New York at the time of the filing of the Bill. Conrad Morris Braker, a defendant, had been the assignor of a portion of the residuary estate of his father, held by the other defendant as Trustee, having assigned the same to one William Brewster Wood, the complainants' testator.

The learned District Judge dismissed the bill, and his certificate (Record, p. 70) shows that the Bill was dismissed on the ground that Conrad Morris Braker, the defendant assignor was a citizen of the same State as Austin B. Fletcher, the defendant Trustee.

From the decree dismissing the Bill this appeal was taken in accordance with Section 238 of the Judicial Code.

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#### SPECIFICATIONS OF ERROR.

*First.*—That the learned District Court erred in dismissing the Bill in the above-entitled cause for lack of jurisdiction.

*Second.*—The learned District Court erred in refusing to maintain jurisdiction of the above-entitled cause.

## ARGUMENT.

The question presented is an extremely simple one, and has been already determined by this Court in the case of *Ingersoll v. Coram*, 211 U. S. 335. Therein this Court said:

"It is charged that the right of the petitioner's intestate was derived from Root, and as he, it is further contended, could not have sued to establish his right to a share in the funds of the administrator, the latter and he being citizens of Montana, that the petitioner was equally disqualified to establish and recover Root's share of the property. The argument is that she is seeking to enforce a right of Root against the administrator arising on an equitable assignment by Root to her intestate, and she is therefore, it is said, suing to recover as assignee of a chose in action upon which the assignor could not sue, because his citizenship is the same as that of the administrator in Massachusetts. Sec. 629, Rev. Stat. There are several answers to the contention. It is certainly very disputable if an interest in a distributive share of an estate is within the statute. Again, she is suing primarily on the obligation of Root to her intestate to secure which a lien was given on Root's distributive share; and besides, again, she sues as administratrix, and she is a citizen of a different State from Leyson. *Sere v. Pitot*, 6 Cranch, 333; *Chappedelaine v. Dechenaux*, 4 Cranch, 308; *Bushnell v. Kennedy*, 9 Wall. 387; *Coal Company v. Blatchford*, 11 Wall. 172; *Rice v. Houston*, 13 Wall. 66" (at page 361).

It will be shown, therefore, first, that this case controls the jurisdictional questions presented by the case at bar; and secondly, that the decision in *Ingersoll v. Coram* followed the previous principles already enunciated by the Federal Courts.

The Montana citizenship of Leyson and Root=the New York citizenship of Conrad Morris Braker and Fletcher, Trustee.

The New York citizenship of Ingersoll and his administratrix=the Pennsylvania citizenship of Mr. Wood and Mrs. Wood and the Provident Life & Trust Company, executors.

The parallel between the two cases is therefore complete and decisive.

In *Brown v. Fletcher*, 206 Federal, 461, now pending in this Court on certiorari, the Circuit Court of Appeals for the Second Circuit attempted to distinguish that case by saying:

"The complainants are not asserting a lien in their own right upon Braker's interest in the decedent's estate, as was the case in *Ingersoll v. Coram*, 211 U. S. 336, but are asserting Braker's title to the sum of \$10,000 to which they say they have succeeded."

While it is true that in the syllabus to *Ingersoll v. Coram*, the legal effect of the agreement, made with Robert G. Ingersoll by Root and Coram, is referred to as constituting "a lien on the distributive share of an heir of defendant's intestate," all through the opinion the interest is referred to indifferently as a lien or an equitable assignment. Thus, at page 361, in the opinion of the Court, quoted above, the right sought to be enforced by the administrator is spoken of as "arising on an equitable assignment by Root to her intestate"; and on page 368 the Court cites with approval in support of its finding *Fourth Street Bank v. Yardley*, 165 U. S. 634, where it was held, under the particular circumstances of the case, that, contrary to the usual rule, the check there given operates as an appropriation or *equitable assignment* of a fund in the hands



**First.—The Decision in *Ingersoll v. Coram* is Decisive of the Jurisdictional Questions Raised in the Case at Bar.**

In that case Root was the claimant to a share in the estate of Davis. Root entered into an agreement with Ingersoll which amounted to an equitable assignment of his share as a fee for professional services. Ingersoll died, and his widow as administratrix brought suit against Leyson as administrator of the estate of Davis situate in Massachusetts. Leyson and Root were citizens of Montana. Ingersoll and his administratrix were citizens of New York. The objection was made that the administratrix was suing to enforce a right of Root, the assignor, against the administrator arising on an equitable assignment by Root to her intestate, the assignee, and that therefore it amounted to a suit to recover as assignee of a chose in action upon which the assignor could not sue, because both the assignor and the defendant administrator were citizens of Montana. The facts in the case at bar, so far as the question of jurisdiction is concerned, are parallel with the facts in *Ingersoll v. Coram*:

Davis=Conrad Braker, Jr., the original decedent.

Root=Conrad Morris Braker, the party interested in the estate of the decedent, and assignor.

William Brewster Wood=Ingersoll, the assignee of the party interested in the decedent's estate.

Mrs. Ingersoll, the administratrix of Ingersoll, and plaintiff=Mrs. Wood and the Provident Life & Trust Company, executors of William Brewster Wood, and plaintiffs.

Leyson, administrator of Davis, defendant=Fletcher, Trustee of Conrad Morris Braker, defendant.

of the drawee. Mr. Chief Justice White, in delivering the opinion in that case, said:

“The deduction arises that as it cannot be reasonably conceived that the loan would have been made without the reference to an *assignment of the particular fund*, from which loan the hope of immediate payment was to be reasonably expected, the parties must have and did intend to create a particular appropriation charge or lien on the property, upon the faith of which they both dealt.”

It is therefore submitted that this is a distinction without a difference, because the lien referred to in *Ingersoll v. Coram* was not a statutory lien or a lien arising simply out of the employment, but resulted from an instrument of writing, the legal effect of which was to constitute an equitable assignment by Root of a portion of his distributive share in the estate of Davis, just as Braker here assigned a portion of his distributive share to Wood; Root and the Trustee of Davis's Estate, being citizens of the same State, just as Braker and Fletcher, Trustee, are in the case at bar.

There is, however, a real distinction (whether or not it be decisive) between the cases of *Brown v. Fletcher* on the one hand, and *Ingersoll v. Coram* and the case at bar on the other, in the fact that in *Brown v. Fletcher* the suit was not by an administrator or executor, whereas, both in *Ingersoll v. Coram*, and in the suit at bar, the suit was by an administrator or executor.

Second.—The Interpretation Placed Upon the Provisions of Section 629 R. S. (Now Section 24 [1st] of the Judicial Code) by This Court in *Ingersoll v. Coram*, Followed the Principles Enunciated in the Previous Decisions of This Court.

It will be well to consider this subject under the two heads suggested by the decision in *Ingersoll v. Coram*.

(a) An interest in a distributive share of an estate (*a fortiori* in a trust fund) is not within the Statute.

(b) The prohibition is against suits by "an assignee" and neither an administrator nor an executor are regarded as assignees within the statute.

#### A.

AN INTEREST IN A DISTRIBUTIVE SHARE OF AN ESTATE (*a fortiori* in a trust fund) IS NOT WITHIN THE STATUTE.

The question here is the meaning of the phrase "chose in action" as used in the statute. The learned District Judge in the case of *Brown v. Fletcher*, now in this Court on certiorari, in overruling the demurrer of the defendant, held that "the interest of a *cestui que trust* in a sum of money held for him by the trustee" was not "what the statute meant by a 'chose in action.'" He cited the case of *Croxall v. Shererd*, 5 Wall. 268, and concluded:

"In respect of personal property also the *cestui que trust* is entitled to possession of the *res* unless its nature precludes; in short, he is entitled at least on a case like this to all absolute interest save the legal title and actual possession. It would be a piece of doubtful pedantry, I think, in view of the usual meaning of the word 'chose in action' to apply it to a relation like that created by the fourteenth paragraph of the will."

In *Croxall v. Shererd*, 5 Wall. 268, the question was of the effect of a deed by a *cestui que trust*. This Court held:

"In the consideration of a court of equity, the *cestui que trust* is actually seized of the freehold. He may alien it, and any legal conveyance by him will have the same operation in equity upon the trust, as it would have had at law upon the legal estate" (at page 281).

In *Deshler v. Dodge*, 16 How. 622, an action of replevin was brought by an assignee of a package of bank notes for their recovery. The Court held that such a suit was maintainable, and said:

"It is admitted the assignors in this case could not have maintained the suit in the federal courts. We are of opinion that this clause of the statute has no application to the case of a suit by the assignee of a chose in action to recover possession of the thing in specie, or damages for its wrongful caption or detention; and that it applies only to cases in which the suit is brought to recover the contents, or to enforce the contract contained in the instrument assigned" (at page 630).

In *Bushnell v. Kennedy*, 9 Wall. 387, this Court discussed the question, and said:

"It has been decided, where the assignment was by will, that the restriction is not applicable to the representative of the decedent. And it has also been determined that the assignee of a chose in action may maintain a suit in the Circuit Court to recover possession of the specific thing, or damages for its wrongful caption or detention, though the court would have no jurisdiction of the suit if brought by the assignors. And it has recently been very strongly argued that the restriction applies only to contracts 'which may be properly said to have contents'; 'not mere naked rights of action founded on some wrongful act, some neg-

lect of duty to which the law attaches damages, but rights of action founded on contracts which contain within themselves some promise or duty to be performed' " (at pages 391 and 392).

In *Ambler v. Eppinger*, 137 U. S. 480, the suit was to recover the value of certain trees and logs alleged to have been converted. The suit was by an assignee. This court sustained the jurisdiction and quoted with approval the above cited case of *Deshler v. Dodge*, and *Bushnell v. Kennedy*, citing the latter case to hold "that the objection to the jurisdiction applied only to rights of action founded on contracts which contained within themselves some promise or duty to be performed" (at p. 483).

In *Bertha Zinc & Mineral Company v. Vaughan*, 88 Fed. 566, a daughter of a decedent who had died intestate, assigned all of her interest in the estate, which by several *mesne* assignments passed to a corporation, the complainant. It filed its Bill against the administrator to recover the daughter's distributive share. The defendants were all citizens of Virginia, as well as the daughter, and the complainant was a New Jersey corporation.

Said the Court:

"It (the case under discussion) is not founded on a contract, nor brought to enforce a contract, but to enforce obligations incurred by administrators of an estate in their official capacity, by a failure to properly discharge their fiduciary duties. A non-resident assignee, bringing suit of this character, is entitled to have the same heard in this Court."

It is therefore respectfully submitted that the opinion expressed by Mr. Justice McKenna in delivering the opinion of this Court in *Ingersoll v. Coram* that an interest in a distributive share of an estate was

not within the statute, follows the principle of the decisions of this Court entirely apart from the language of the Act of 1875, repealed by the Act of 1887. It would seem obvious that an interest in an estate is not a contract such as Congress had in mind in passing the Act. Certainly, the interest of a *cestui que trust* in a trust fund is far less of a "chose in action" than a distributive share in an estate.

### B.

THE PROHIBITION IS AGAINST SUITS BY "AN ASSIGNEE"  
AND NEITHER AN ADMINISTRATOR NOR AN EXECUTOR  
ARE REGARDED AS ASSIGNEES WITHIN THE STATUTE.

The decision in *Ingersoll v. Coram* only recognized the expressed decisions of this Court.

In *Chappedelaine v. Dechenaux*, 4 Cranch, 306, an objection to the maintenance of the suit was interposed, but Mr. Chief Justice Marshall held that the suit was maintainable because it was by an executor, and that jurisdiction of the testators was unimportant. This decision was quoted by Mr. Chief Justice Marshall in *Sere v. Pitot*, 6 Cranch, 332, and the meaning of the Act was explained. Mr. Chief Justice Marshall concluded by saying:

"The representatives of a deceased person are not usually designated by the term 'assignees,' and are therefore not within the word of the Act" (at page 336).

In *Rice v. Houston*, 13 Wall. 66, on an agreed state of facts, this Court held:

"Although in controversies between citizens of different states, it is the character of the real and not that of the nominal parties to the record which determines the question of jurisdiction, yet it has been repeatedly held by this Court that suits can be maintained in the Circuit Court by execu-

tors or administrators if they are citizens of a different state from the party sued, on the ground that they are the real parties in interest, and succeed to all the rights of the testator or intestate by operation of law" (at p. 67).

The decision in *Ingersoll v. Coram* simply applies the same legal principle to plaintiff administrators in a case where there have been intermediate assignees prior to the death of the party represented by such administrator. It is submitted that this is an immaterial point, and that since an administrator is not in any sense of the term, as Mr. Chief Justice Marshall pointed out, an "assignee" it is immaterial whether or not there may have been several *mesne* assignments.

In conclusion, it is respectfully urged that the facts and the decision of this Court in *Ingersoll v. Coram* have foreclosed the question of jurisdiction as applicable to the case at bar. But if any distinction, unperceived by counsel for appellants, exists, it is submitted that a suit against a trustee to establish a lien upon a distributive share in a decedent's estate can hardly be described as a suit to recover the contents of a chose in action, and that the trend and character of the decisions of this Court establish the principle that such suit is without the statute.

PERRY D. TRAFFORD,  
H. GORDON MCCOUCH,

*Solicitors for Appellants.*





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No. ~~1028~~.

Office Supreme Court,  
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JAMES D. MAHER  
CLERK

No.

October Term, 1913.

## Supreme Court of the United States

PROVIDENT LIFE AND TRUST COMPANY  
and CATHARINE STEWART WOOD, Ex-  
ecutors of the Estate of William Brewster  
Wood, deceased,

Appellants,

vs.

AUSTIN B. FLETCHER, as Testamentary Trus-  
tee of Conrad Morris Braker, under the Last  
Will and Testament of Conrad Braker, Jr.,  
deceased, and CONRAD MORRIS BRAKER,  
Appellees.

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**BRIEF ON PART OF AUSTIN B.  
FLETCHER, AS TRUSTEE, &C.,  
APPELLEE.**

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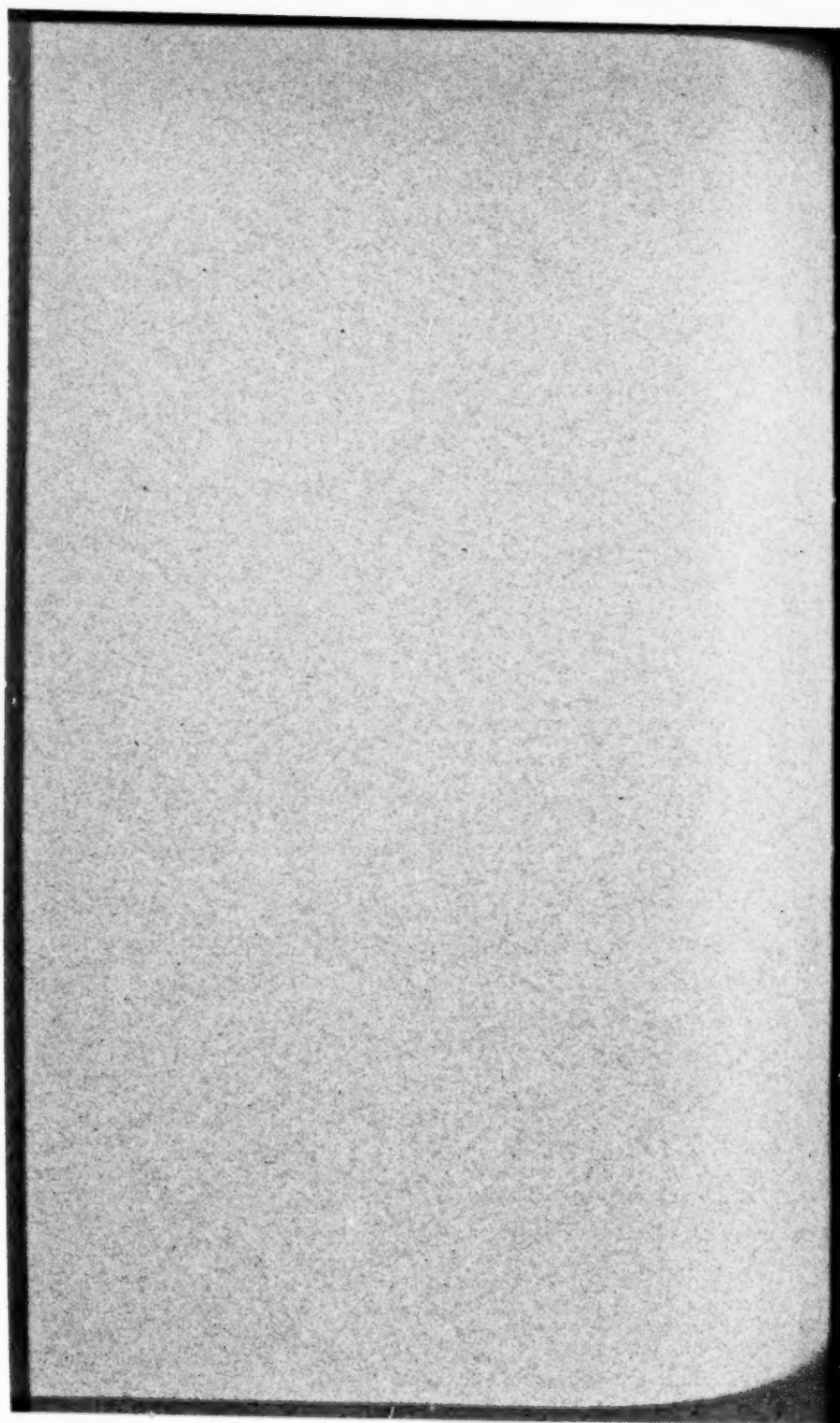
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WILLIAM P. S. MELVIN,  
Solicitor for Defendant  
Austin B. Fletcher, Appellee.

SAFFORD A. CRUMMEY,  
Solicitor for Conrad Morris Braker,  
Defendant.

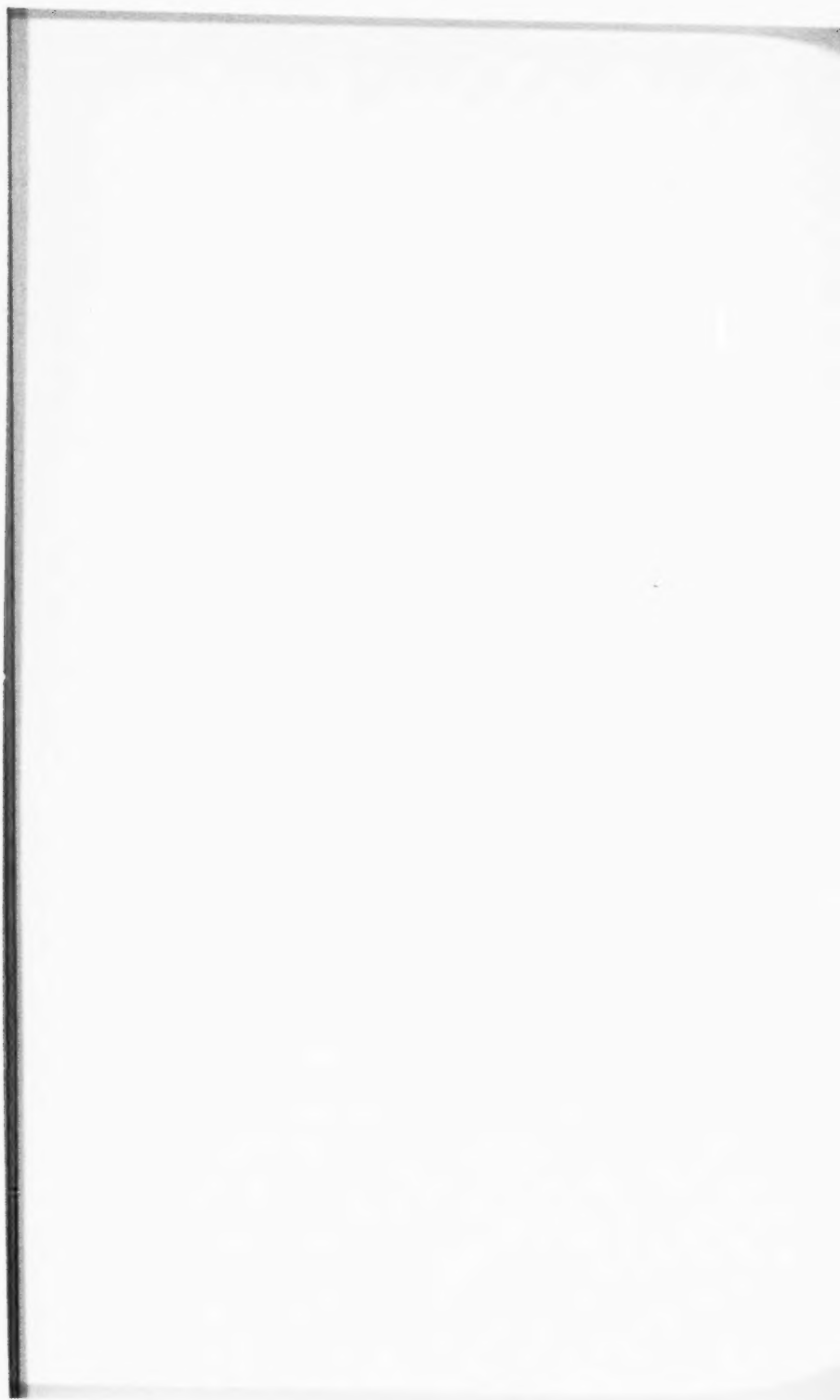
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## Supreme Court of the United States

PROVIDENT LIFE AND TRUST COMPANY and CATHARINE STEWART WOOD, Executors of the Estate of William Brewster Wood, deceased,

Appellants,

vs.

AUSTIN B. FLETCHER, as Testamentary Trustee of Conrad Morris Braker, under the Last Will and Testament of Conrad Braker, Jr., deceased, and CONRAD MORRIS BRAKER,

Appellees.

### Statement of the Case.

The bill of complaint shows that one Conrad Braker, Jr., by the fifteenth and sixteenth sections or paragraphs of his Last Will and Testament (pages 17, 18), established separate trust funds in favor of Conrad Morris Braker, making Henry J. Braker the trustee thereof, and that under the terms of the Will he was directed to hold

the funds for the use of said *cestui que trust* until he should be fifty-five years of age, which would be on February 25, 1913. That the defendant Austin B. Fletcher, on November 16th, 1897, was appointed trustee by the Surrogates' Court of the County of New York, to succeed Henry J. Braker, and to execute the unexecuted trusts under the Will (pages 3, 4), and that he now holds said trust funds.

The bill shows the following assignment to have been made by the *cestui que trust*, Conrad Morris Braker, of interests in said trust funds; and it also shows the subsequent *mesne* assignments thereof subsequently made and hereinafter enumerated, until such interests finally lodged in the hands of the complainants:—

FIRST.—On February 25, 1902, the defendant and *cestui que trust*, Conrad Morris Braker, by deed of assignment transferred to the New York Finance Company all the right, title and interest to which he was entitled, to the extent of \$35,000.00, in the legacy of \$50,000.00, and in the legacy of the share in the residuary under the fifteenth and sixteenth paragraphs of said Will, subject to the payment of seven-tenths of the legacy for \$50,000.00 under the fifteenth paragraph of the Will, which had theretofore been assigned by him to one Frank L. Rabe (page 5; Exhibit "B," pages 20-26).

SECOND.—On March 5, 1902, the New York Finance Company, by deed of assignment, in consideration of \$15,000.00, transferred to William Brewster Wood all the right, title and interest of any kind which it had or might thereafter have in the estate of Conrad Braker, Jr., by virtue of the

preceding assignment (page 6; Exhibit "D," pages 27-29).

This deed, as appears thereby, was given for the purpose of securing the payment with interest to William Brewster Wood on July 5, 1908, of the promissory note of the New York Finance Company of even date therewith, for \$15,000.00 (pages 5, 6; Exhibit "C," pages 25, 26).

THIRD.—On May 14, 1912, the New York Finance Company, by deed of assignment, "bargained, sold, assigned, transferred, set over and quit-claimed" unto Catharine Stewart Wood and the Provident Life & Trust Company of Philadelphia, Executors of the Will of William Brewster Wood, deceased (the complainants) "all the equity of redemption, right, title and interest whatsoever which the said New York Finance Company now has or might or could have in and to the above described interest of \$20,000.00 in the estate of Conrad Braker, Jr., deceased, so assigned by it to William Brewster Wood as collateral security for a debt of \$15,000.00 and interest" (page 7; Exhibit "E," pages 30-34).

It will be seen by an inspection of this deed of assignment (Exhibit "E") that it is supported by an entirely new consideration for its execution, passing between the said executors and the New York Finance Company. It refers to the original instrument of assignment from Conrad Morris Braker to the New York Finance Company; it recites the above deed of assignment given by it to William Brewster Wood as security for the payment of its note of \$15,000.00; the death of Wood, and the appointment of the complainants as executors, and it thereupon states an account as of the time when Braker shall have attained the age of fifty-five years, between the New York Fi-

nance Company and the executors of William Brewster Wood as to their respective rights; and it also states an account between said executors and the New York Finance Company as to another indebtedness arising out of one of said company's notes for \$9,500 (entirely foreign to Braker's interest); and it then recites that the company has agreed to sell to the executors of the estate of William Brewster Wood any equity it has in the estate of Conrad Braker, Jr., assigned by it to William Brewster Wood, "in consideration of being given a credit of One hundred Dollars (\$100) upon the interest due by it on the note last above described" (said note of \$9,500) and the deed declares that it is "*in consideration of the premises and of One hundred Dollars (\$100) to it in hand paid,*" &c., &c.

The defendants have answered the bill separately. The answer of the defendant, Austin B. Fletcher, shows by allegation V (page 36), as a fourth defense, that upon the face of the bill the District Court had not cognizance of the suit.

On March 27, 1911, a motion was made on the part of the defendant, Austin B. Fletcher, before one of the Justices of the United States District Court for the Southern District of New York, upon the bill of complaint and the defendant's answer for a decretal order dismissing the suit on the ground that the Court had not cognizance thereof (page 67) and, after hearing, the suit was ordered dismissed (page 68).



## Argument.

The only questions presented to the Court on this appeal are whether the assignment made by the defendant, Conrad Morris Braker, on February 25, 1902, to the New York Finance Company of a part of his interest in a trust fund established for his benefit, was an assignment of a *chose in action*, and, if so, whether the District Court for the Southern District of New York, was precluded from taking cognizance of the suit brought against the Trustee and *cestui que trust* to enforce the assignment, because of the provision of the Judicial Code (Sec. 24, First par.) prohibiting the entertainment of any such suit in the court unless it might have been prosecuted in the court if no assignment had been made,—it appearing by the bill that both the Trustee and the *cestui que trust* are citizens of the State of New York; and whether the fact that this suit is brought by the complainants in their representative character, as executors, has any effect as to the application of the above statute.

The above section of the Judicial Code contains a law that has stood with but slight change since the time of its promulgation by the Judiciary Act of 1789. Its language almost continuously since that time has been against the cognizance by the trial court of a suit "*to recover the contents of any promissory note or other chose in action*," now its prohibitory terms are against the cognizance of any suit "*to recover upon any promissory note or other chose in action*."

When referring to the time since the original promulgation of the act, I except, of course, the period during which the amendment of 1875 was in operation (until March 3, 1887), when the prohibition was against cognizance "of any suit founded on a contract in favor of an assignee unless a suit might have been prosecuted in such court to recover thereon, if no assignment had been made, except in cases of promissory notes, negotiable by the law merchant and bills of exchange."

The change made by the present law,—“to recover upon any promissory note or other chose in action”—would seem to greatly enlarge the jurisdiction of the District Court, but, be this as it may, it does not affect this present controversy, for whether the law has reference to the *contents* of a *chose in action*, or simply to a *chose in action*, it is plain that in either case the court can take no cognizance of this action. There can be no doubt it is founded on a *chose in action*; that there has been an assignment of it, and that by reason of the assignor's citizenship the lower court could not take cognizance.

Chief Justice Marshall said in *Sere vs. Pitot* (6 Cranch, 333), as to the term "*other chose in action*,"—that it was broad enough to comprehend either those who could sue by legal or those who could sue by virtue of *equitable assignments*, and that the word "contents" was too ambiguous in its import to restrain that general term,—i. e., *chose in action*. "The contents of a note," he said, "are the sum it shows to be due."

In *Shoecraft vs. Bloxham* (124 U. S., 730; 31 L. e., 574), the Court said:

"The contents of any promissory note, or other 'chose in action' were designed to embrace the rights the instrument conferred which were capable of enforcement by suit. They were not happily chosen to convey the meaning, but they have received a construction substantially to that purport in repeated decisions of this court."

In *Corbin vs. Black Hawk Co.* (105 U. S., 659; 26 L., ed., 1136), which was a suit for the specific performance of contract for the purchase of land, Judge Blatchford said that such a suit must be regarded as one to recover the contents of a contract as a chose in action, and so not maintainable by an assignee if it could not have been prosecuted had no assignment been made. *Equitable* as well as legal assignments are included. He said:

"The contents of a contract as a chose in action in the sense of Section 629 are the rights created by it in favor of a party in whose behalf stipulations are made in it which he has a right to enforce in a suit founded on the contract; and a suit to enforce such stipulations is a suit to recover such contents. The promise to pay money contained in a promissory note is all that there is of the note. A suit to enforce the payment of the money is a suit to recover the contents of the note, because there is nothing contained in the note but the promise."

This court has itself given us a definition of what is a *chose in action*. In *Sheldon vs. Sill*, 49 U. S., 441; 12 L., ed., 1147, 1151, Judge Grier says:

"The term 'chose in action' is one of comprehensive import. It includes all the infinite varieties of contracts, covenants and promises which confer on one party a right to recover a personal chattel or a sum of money by action."

In *Bushnell vs. Kennedy* (9 Wall., 387; 19 L. e., 738) Chief Justice Chase says regarding the term "*chose in action*," that:

"Under that comprehensive description are included all debts and all claims for damages for breach of contract, or for torts connected with contract."

As used in the statute, there are no accompanying expressions whatever delimiting the breadth of the term "*chose in action*." We submit that Congress in framing the law did not design to lessen, or qualify, or restrict the significance of those words; on the contrary, their purpose was not to minimize, but to adopt a word of great scope, and the great aim of the statute was to prevent, as far as possible, the entertainment of any suits in the Federal Courts, other than those strictly arising between citizens of different states, apprehending that unless such care were taken, the courts would be overborne by the volume of suits cunningly brought before them by force of assignments more specious than real. The legislators were concerned that the jurisdiction of the Court should be such as to bar out all others than genuine assignments between citizens of different states.

*Bushnell vs. Kennedy*, 76 U. S., 387; 19 L. ed., 737, 738.

Under the head "*chose*,"—"choses in action," Bouvier in his Law Dictionary gives us as definition—

"Personal things, of which the owner has not the possession, but merely a right of action for their possession."

And he refers to 2 Blackstone Comm., 389, 397. In Blackstone we read:

"Property in chattels personal may be either *in possession*, which is where a man hath not only the right to enjoy but hath the actual enjoyment of the thing; or else, it is in action where a man hath only a bare right without any occupation or enjoyment."

Book 2, 389.

Again he says:

"We will proceed next to take a short view of the nature of property *in action*, or such where a man hath not the occupation but merely a bare right to occupy the thing in question the possession whereof may, however, be recovered by a suit or action at law; from whence the thing so recoverable is called a thing or *chose in action*."

Book 2, 397.

A *chose in action* is said to be a thing not in occupation or enjoyment, but merely a bare right to be recovered by an action, hence its name.

U. S. vs. Moulton, 27 Fed. Cas., 11, 12.

An assignment in a testamentary trust fund is characterized as an assignment of a *chose in action*.

Mercantile Trust Co. vs. Gubernat, 143 App. Div., 308.

A *chose in action*, or a thing in action, is a term used in contradistinction to a chose, or thing, in possession.

Ayres vs. West R. R. Co., 48 Barb., 135.

A *chose in action* includes all rights to personal property not in possession, which may be enforced by action.

Gillett vs. Fairchild, 4 Den., 80.

"It is a right of proceeding in a court of law to procure the payment of a sum of money. The term is used in contradistinction to choses in possession, which were chattels of which one is in possession or control, such as corn, wheat, books and the like.

One view has restricted the term to rights of action for money arising under contract, but while it comprehends these, whatever the contract, it is undoubtedly of much broader significance, and includes the right to recover pecuniary damages for a wrong afflicted either upon the person or property."

Citing,—

Gillett vs. Fairchild, *supra*, McKee vs. Judd, 12 N. Y., 622; Williams Per. Prop. 4.

3 Amer. & Eng. Encyc. Sub Tit. "Choses in Action," 236.

The right to sue for a trust fund misapplied by the trustee is an *equitable chose in action* (id.).

A *chose in action* is defined to be "the interest in a contract which in case of non-performance can only be reduced into beneficial enjoyment by an action or suit."

Haskell vs. Blair, 57 Mass., 534, 536.

A life insurance policy has been held to be a chose in action,

Prudential Life Ins. Co. vs. Humn, 21 Ind. App., 525, 529,

even before the death of the insured.

Steele vs. Gatlin, 115 Ga., 929.

Pertinent, too, is the opinion of the Circuit Court of Appeals for the Second District in Brown vs. Fletcher (206 Fed. Rep., 461), a case very similar in its character to that now before the Court. It was a suit between the same complainants and this defendant-trustee to recover on the assignment made by the same *cestui que trust* of another trust fund created under the same will. In it the objection was raised, as now, to the Court's jurisdiction. Judge Learned Hand of the U. S. District Court, in overruling the demurrer, conceded upon the question whether the interest of the *cestui que trust* in the sum of money held for him by the trustee, was or was not a *chose in*

*action* under Sec. 24 of the Judiciary Code—that such was no doubt the case “*in strict legal theory,*” but he said that he did not think the *cestui que trust*’s interest is what the statute meant by a *chose in action*.” The case went to hearing resulting in a decision on the merits in favor of the defendant. An appeal was taken to the Circuit Court of Appeals and again it was objected by the defendant that the lower Court did not have jurisdiction and the Appellate Court dismissed the suit upon that and other grounds.

The cause is now pending in this Court on writ of certiorari.

The Circuit Court of Appeals says, with reference to the assignment:

“The complainants are not asserting a lien in their own right upon Braker’s interest in the decedent’s estate, as was the case in *Ingersoll vs. Coram*, 211 U. S., 336, but are asserting Braker’s title to the sum of \$10,000.00 to which they say they have succeeded. *This is clearly a chose in action*, that is a claim not in possession, but which must be enforced by an action against the trustee, *Sheldon vs. Sill*, 49 U. S., 441. As their assignors could not maintain an action in the District Court, the complainants cannot.”

The *Ingersoll* case (*Ingersoll vs. Coram*, 211 U. S., 336), upon which so much stress is laid by the appellants, will be found on criticism to vary greatly from the present. That action was not based upon an assignment of a *chose in action*. It was an action brought upon a contract of em-



ployment to have an attorney's lien declared and foreclosed upon property realized because of the litigation following the employment. The facts were simply that Andrew J. Davis, a wealthy man, died and by his will left all his property to his brother. Certain of his next of kin united to contest the probate of the will. Two of these agreed with their associates to conduct and finance the litigation in the interest of all, receiving therefor an assignment of part of the outcome that might be secured for the others. Those two made a bargain with Col. "Bob" Ingersoll for his professional services agreeing that if the will were set aside his fee should be \$100,000. Pending the litigation a compromise, however, was effected, and, as a result, it was claimed that an equitable lien in favor of Ingersoll and his legal representatives attached to the interests of the contestants and that the assets in Massachusetts should be subject to the debt growing out of Ingersoll's employment. The suit then was one to declare and foreclose a lien upon the property of the decedent distributable to the contestants. The syllabus of the case itself presents the distinction. It states that where the plaintiff is suing *primarily upon an obligation* to secure which a lien was given upon a distributive share of an heir's interest in an estate, it is not within the statute governing federal jurisdiction of suits by assignees of *choses in action*. In our case the plaintiffs are suing upon and by virtue of the assignment itself. The suit is not to declare and enforce a lien upon a distributive share of an estate.

Indeed, it would seem sufficient to say that the trust fund is not the distributive share of an estate in any other sense than that its origin was the estate of the decedent, Conrad Braker, Jr. The estate itself has been long since distributed.

The trust fund is held by the trustee solely for the benefit of the *cestui que trust* and his assigns.

THE CASES CITED BY APPELLANTS IN THEIR BRIEF (Deschler vs. Dodge; Bushnell vs. Kennedy; Ambler vs. Eppinger; Bertha Zinc & Mineral Co. vs. Vaughan) HAVE NO APPLICATION WHATEVER TO THE CAUSE BEFORE THE COURT IF INVOKED TO SHOW THAT THEY COULD MAINTAIN THIS ACTION IN THE DISTRICT COURT.

Each of these cases has to do with tortious causes of actions assigned over to suitors which were declared to be not within the statute. Deschler vs. Dodge was an action in replevin. Bushnell vs. Kennedy seems to have been for money wrongfully obtained from an agent entrusted with it. Ambler vs. Eppinger (137 U. S., 480; 34 L. e., 765) was an action for damages on account of a trespass. Bertha Zinc and Mineral Co. vs. Vaughan was an action against administrators and their sureties for a *devistavit*. Justice Field, in the case of Ambler vs. Eppinger, showed that the exception in the statute did not extend to suits growing out of some tortious act.

See to same effect

Mex. Nat. R. Co. vs. Davidson, 157 U. S., 201; 39 L. e. 672-674.

ALTHOUGH THE COMPLAINANTS SUE  
AS EXECUTORS, THEY ARE NONE THE  
LESS TO BE REGARDED ASSIGNEES OF  
THE DEED OF ASSIGNMENT MADE BY  
CONRAD MORRIS BRAKER.

The complainants seek to save themselves by invoking the case of *Chappedelaine vs. Deschenaux*, 4 Cranch, 306, and other such cases wherein it is asserted that assignees "*by operation of law*," as administrators or executors, who have taken up the burthen of decedents' estates, are not within the statute in question. It is enough to say in opposition that they are, notwithstanding their assertion, assignees by their own contract of assignment. They are not passive agents; they are *actors* so far as concerns their conduct and relations with the New York Finance Company. By the very instrument on which they base their title (Exhibit "E," pages 30-34), it will be seen, that they, as executors, received this deed of assignment from the New York Finance Company; *that an entirely new consideration* passed between them and that accounts were stated between them relating not only to the matter of the assignment made by Conrad Morris Braker, but to another loan made to their decedent.

Respectfully submitted,

WILLIAM P. S. MELVIN,

Solicitor for Defendant,

Austin B. Fletcher,

as Trustee, etc.

SAFFORD A. CRUMMEY,

Solicitor for Defendant,

Conrad Morris Braker.



No. 455

October

Ter **JAMES D. MAHER**  
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**FILED**

**OCT 6 1914**

## **Supreme Court of the United States**

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tee of Conrad Morris Braker, under the Last  
Will and Testament of Conrad Braker, Jr.,  
deceased, and **CONRAD MORRIS BRAKER**,

Appellees.

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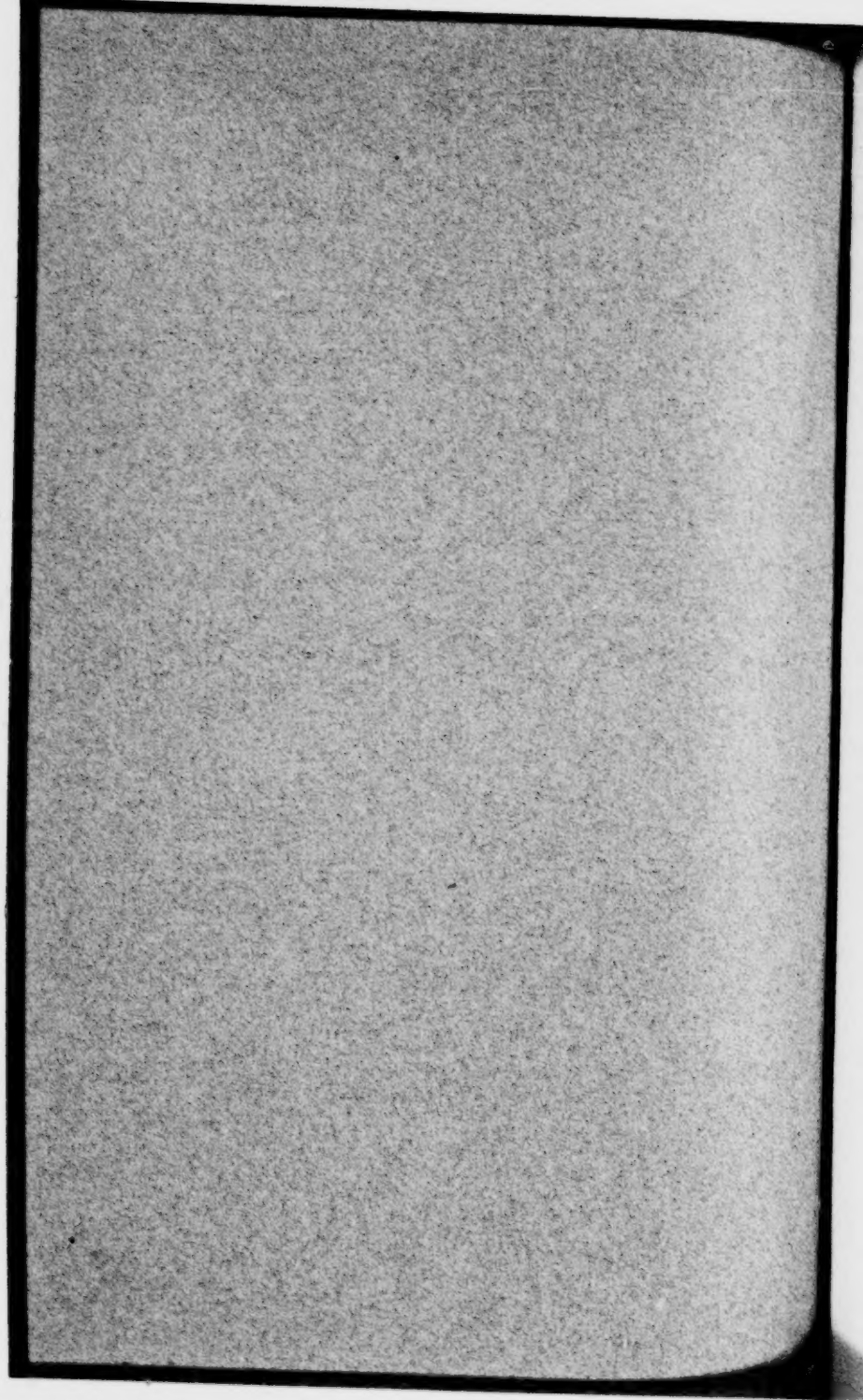
### **BRIEF ON APPEAL.**

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**WILLIAM P. S. MELVIN**,  
Solicitor for Defendant  
Austin B. Fletcher, as Trustee, etc., Appellee.

**SAMUEL A. CRUMMEY**,  
Solicitor for Conrad Morris Braker,  
Appellee.

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## Supreme Court of the United States

THE PROVIDENT LIFE AND  
TRUST COMPANY and CATHA-  
RINE STEWART WOOD, as Ex-  
ecutors under the Last Will  
and Testament of William  
Brewster Wood, deceased,

vs.

AUSTIN B. FLETCHER, as Testa-  
mentary Trustee of Conrad  
Morris Braker, under the Last  
Will and Testament of Con-  
rad Braker, Jr., deceased, and  
CONRAD MORRIS BRAKER.

No. 455

### BRIEF ON PART OF APPELLEES.

#### Statement.

This is a suit in equity brought by the plaintiffs in the District Court of the United States for the Southern District of New York to obtain a judgment that they be declared entitled to the immediate possession of Twenty thousand Dollars (\$20,000.00) payable under the "Sixteenth" paragraph of the last will and testament of Conrad

Braker, Jr., deceased, and that the Court order and direct the defendant Austin B. Fletcher, as testamentary trustee under said will to pay to the plaintiffs said Twenty thousand Dollars (\$20,000) (Record, pages 9, 10). The sum is part of a trust fund established by the testator in favor of his son, the defendant, Conrad Morris Braker. The trustee named in the will to administer the trust fund having resigned, the defendant, Austin B. Fletcher, was appointed in his stead by the Surrogate's Court of the County of New York to execute the unexecuted trusts under the will, one of which trusts (so far as relates to this action) concerns the administration of the trusts created under its "Fifteenth" and "Sixteenth" paragraphs.

The will was admitted to probate on the 13th day of September, 1890.

Under its 15th paragraph the testator established a trust fund of \$50,000.00, of which his son, the *cestui que trust*, was to have the use until he should attain the age of fifty-five years, which event would occur on the 25th day of February, 1913, and that thereupon he should receive the principal of the trust fund.

Under the 16th paragraph of the will a trust fund was established of the rest, residue and remainder of testator's property. This also was in favor of the same son and by it he was likewise to have the use thereof until he should attain the age of fifty-five years when he should be paid the principal.

On the 25th day of February, 1902, the *cestui que trust*, Conrad Morris Braker, made a deed of assignment in writing to the New York Finance Company, a New York corporation, of all his es-

tate, right, title and interest to the amount or extent of Thirty-five thousand Dollars (\$35,000.00) and no more in and to the legacy of \$50,000.00, and, also, in the legacy of the part or share of the residuary estate to which he was entitled under the "Fifteenth" and "Sixteenth" paragraphs respectively of said will, subject to the payment of seven-tenths of the legacy of \$50,000.00 under the "Fifteenth" paragraph of the will which had theretofore been assigned by the *cestui que trust* to one Frank L. Rabe, amounting to \$35,000.00.

This deed of assignment was drawn with formality and was under seal, was witnessed and acknowledged, and purports to have been recorded in the offices of the Register and Surrogates of the County of New York (Ex. B, pages 20-25).

A few months after the execution of this assignment, namely, on March 5th, 1902, the assignee, the New York Finance Company, gave its promissory note to William Brewster Wood for \$15,000, payable July 5th, 1908. A renewal or substituted promissory note was made on July 5, 1903. These notes were for \$15,000.00 and as collateral security for the payment of the same, there was pledged all the right, title and interest of the Finance Company in and to the estate of Conrad Braker, Jr., deceased, as shown by the written assignment thereof of the same date. The note of July 5, 1903, and the deed of assignment given as security are (Exs. "C" and "D," pages 25-29).

Exhibit D recites that Braker had assigned to the Finance Company all his interest to the extent of \$20,000 in the legacy coming to him under the "Sixteenth" paragraph of the will.

On April 24, 1905, the assignee, William Brew-

ster Wood, died, and Letters Testamentary were issued to his widow and the Provident Life and Trust Company, the plaintiffs.

On May 14, 1912, the New York Finance Company sold, assigned, transferred and set over unto Catharine Stewart Wood and the Provident Life and Trust Company of Philadelphia, executors of the will of William Brewster Wood, deceased, all the equity of redemption, right, title and interest whatsoever which said Finance Company had or might or could have in and to an interest in the estate of Conrad Braker, Jr., assigned by it to William Brewster Wood as collateral security for a debt of Fifteen thousand Dollars and interest (Ex. "E," pages 30-34).

The recitals in Exhibit "E" indicate that interest, running on the said note, was claimed from January 5, 1907, and that interest was thereupon calculated, not only for what was then due, but, besides, down to the time that Braker, the *cestui que trust* would be fifty-five years of age; then interest was cast upon another debt of the said Finance Company to the estate of William Brewster Wood, not connected in any way, seemingly, with the above note, and the said Company thereupon agreed that if the said estate gave it a credit of One Hundred Dollars upon the latter indebtedness, it would sell to the executors of the estate of William Brewster Wood any equity it might possibly have in the interest assigned by it to said William Brewster Wood in the state of Conrad Braker, Jr.

The right of action asserted by the plaintiffs is based upon the said assignments "B," "D" and "E," and they claim (par. "Fourteenth" of Bill,

page 8) that by the original assignment (Ex. "B") and the *mesne* assignments, an absolute title was vested in them to the Twenty Thousand Dollars payable under the "Sixteenth" paragraph of the will of Conrad Braker, Jr.

On the day when Conrad Morris Braker became fifty-five years of age (February 25, 1913), this suit was instituted by the plaintiffs. The defendants answered separately and each plead that upon the face of the bill the District Court had not cognizance of the suit (pages 36, 53).

On March 27, 1914, motions were made in the District Court, on the part of each defendant, for a decretal order dismissing the suit with costs on the ground that the Court had not cognizance of the same (pages 66, 67).

The motions to dismiss the suits were granted, and thereupon an order was made by the Court, dismissing the suit with costs on the ground that the District Court had no cognizance of the same, inasmuch as the suit could not be prosecuted in the court if no assignment had been made (page 68).

The plaintiffs then petitioned for an allowance of an appeal to the Supreme Court of the United States, under the provisions of section 238 of the Judicial Code, which, being allowed, the Court certified that the dismissal of the bill was solely on the ground that no jurisdiction of the District Court existed; that the determination was on the ground that one of the defendants was the assignor of an interest in a decedent estate, which interest was assigned to the complainants, and that the defendant assignor is a citizen of the same state as his co-defendant (page 70).

## Argument.

The bill of complaint of the plaintiffs herein was dismissed by the District Court on the ground solely that this was a suit to recover upon a chose in action in favor of an assignee, and that the suit could not be prosecuted in such court to recover upon the chose in action if no assignment had been made.

The suit is brought by persons who by *mesne* assignments from the original assignee, have become possessed of a part of the vested interest of a *cestui que trust* in a testamentary trust fund held by his trustee for his benefit until he should attain the age of fifty-five years, and which was then to be paid over to him by the trustee. The trustee is the defendant, Austin B. Fletcher. The *cestui que trust* is the defendant, Conrad Morris Braker, and the bill of complaint shows that both trustee and *cestui que trust* are citizens of the State of New York.

### POINT I.

**The present statute fixing the jurisdiction of District Courts is unqualified in its expression that they cannot take cognizance of a suit to recover upon a CHOSE IN ACTION in favor of any assignee unless such suit might have been prosecuted in the court if no assignment had been made.**

The following is the text of the Judicial Code so far as it affects the question now before the court:



"No district court shall have cognizance of any suit (except upon foreign bills of exchange) to recover upon any promissory note or other chose in action in favor of any assignee, or of any subsequent holder, if such instrument be payable to bearer and be not made by any corporation, unless such suit might have been prosecuted in such court to recover upon said note or other chose in action if no assignment had been made."

Sec. 24 Judicial Code, First Subdiv.

This law limiting the jurisdiction of the lower courts was first announced by Congress in Section 11 of the Judiciary Act of 1789 (Stat. at Large 78, ch. 20) as follows:

"Nor shall any District or Circuit Court have cognizance of any suit to recover the contents of any promissory note or other chose in action in favor of an assignee unless such suit might have been prosecuted in such court to recover the said contents if no assignment had been made."

This statute was reenacted in Section 629 of the Revised Statutes with slight modification, as follows:

"The Circuit Courts shall have original jurisdiction as follows:

FIRST.—Of all suits of a civil nature at common law or in equity \* \* \* Provided that no Circuit Court shall have cognizance of any suit to recover the contents of any promissory

note or other chose of action, in favor of an assignee, unless a suit might have been prosecuted in such court to recover the said contents, if no assignment had been made, except in cases of foreign bills of exchange."

Thus the law remained until 1875 when it was changed to read as follows:

"Nor shall any Circuit or District Court have cognizance of any suit founded on a contract in favor of an assignee unless a suit might have been prosecuted in such court to recover thereon if no assignment had been made, except in cases of promissory notes, negotiable by the law merchant and bills of exchange."

But the Act of 1875 was amended and the law restored to practically the form in which it originally stood in 1789. This last amendment was made by the Acts of March 3, 1887, and of August 13, 1888, and is as follows:

"Nor shall any Circuit or District Court have cognizance of any suit except upon foreign bills of exchange, to recover the contents of any promissory note, or other chose in action, in favor of any assignee or of any subsequent holder, if such instrument be payable to bearer, and be not made by any corporation, unless such suit might have been prosecuted in such court to recover the said contents if no assignment or transfer had been made."

It will be observed that the changes now made in the law by the Judicial Code are rather in its

structure than in its substance, except in one particular which does not so much affect the question before the court, as it serves perhaps to indicate that by the omission of the word "*contents*" (a word that had appeared in the law from the very beginning), Congress purposed to remove the limitations that by its use in aid of construction the court had placed upon the term "*chose in action*." The limitation being removed the broadest interpretation to the term should now be given, with the result that many more cases are now excluded from cognizance by the District Court.

Chief Justice Marshall said in 1808, in *Sire vs. Pitot* (6 Cr., 335), commenting on the term "*chose in action*," that the word "*contents*" was too ambiguous in its import to restrain that general term; nevertheless, it will appear that the court, in its subsequent history, has been controlled in its decisions by the association of the word "*contents*" with that term.

Thus in *Corbin vs. Black Hawk Co.* (105 U. S., 659, 26 l. e., 1136), a cause which originated in 1874, Judge Blatchford said:

"The *contents* of a contract as a *chose in action* in the sense of Sec. 629 are the rights created by it in favor of a party in whose behalf stipulations are made in it which he has a right to enforce in a suit founded on the contract; and a suit to enforce such stipulations is a suit to recover such *contents*. The promise to pay money contained in a promissory note is all that there is of the note. A suit to enforce the payment of the money is a suit to recover the *contents* of the note, be-

cause there is nothing contained in the note but the promise."

Again, it was held in *Shoecraft vs. Bloxham* (124 U. S., 730, 31 l. e., 574) that a suit to enforce the performance of a contract is a suit to recover *the contents of a chose in action*. The court said:

"The terms used, 'the contents of any promissory note or other chose in action,' were designed to embrace the rights the instrument conferred which were capable of enforcement by suit. They were not happily chosen to convey this meaning but they have received a construction substantially to that purport in repeated decisions of this court. They were so construed in the recent case of *Corbin vs. Black Hawk County*, 105 U. S., 659 (26:1136) where the subject is fully considered and the decisions cited."

Reference has been made by the appellants to the cases of *Deshler vs. Dodge*, 1853, (16 How, 622); *Bushnell vs. Kennedy*, 1870, (9 Wall., 387); *Ambler vs. Eppinger* (137 U. S., 480); and *Bertha Zinc and Mineral Company vs. Vaughan* (88 Fed., 566) as in some way sustaining their contention here that the assignment is such a *chose in action* as may be maintained in the District Court notwithstanding the fact of the citizenship of the original assignor being the same as the trustee. But an inspection of all these cases will show that they were all founded on assignments of tortious claims, and the courts held that such claims were not within the restrictions of the statute because they

did not have "*contents*"—the plain inference being that without such word the court would have given the term "*chose in action*" its full import and denied the jurisdiction of the lower court.

Judge Nelson said in *Deshler vs. Dodge* (*supra*) :

"We are of the opinion that this clause of the statute has no application to the case of a suit by the assignee of a chose in action to recover possession of the thing in specie, or damages for its wrongful caption or detention, and that it only applies to cases in which the suit is brought to recover the *contents*, or to enforce the contract contained in the instrument assigned."

## POINT II.

**The Supreme Court early defined what is a "*chose in action*," as the term is used in the statute, and the term has a familiar meaning in our law literature and decisions.**

The Supreme Court has itself given us a definition of what is a *chose in action*. In *Sheldon vs. Sill*, (49 U. S., 441, 12 l. e., 1147, 1151), Judge Grier says :

"The term '*chose in action*' is one of comprehensive import. It includes all the infinite varieties of contracts, covenants and promises which confer on one party a right to recover a personal chattel or a sum of money by action."

In *Bushnell vs. Kennedy* (9 Wall., 387, 19 l. e., 738) Chief Justice Chase says, regarding the term:

“Under that comprehensive description are included all debts and all claims for damages for breach of contract, or for torts connected with contracts.”

A *chose in action* is said to be a thing not in occupation or enjoyment, but merely a bare right to be recovered by an action; hence its name.

*U. S. vs. Moulton*, 27 Fed. Cas., 11, 12.

An assignment of an interest in a testamentary trust fund is characterized as an assignment of a *chose in action*.

*Mercantile Trust Co. vs. Gubernat*, 143 N. Y. App. Div., 308.

Under the head “Chose”—“Choses in action,” Bouvier in his law dictionary gives as definition:

“Personal things of which the owner has not the possession, but merely a right of action for their possession.”

And he refers to 2 Blacks. Comm., 389, 397. In Blackstone we read:

“Property in chattels personal may be either in possession, which is where a man hath not only the right to enjoy but hath the actual enjoyment of the thing; or else it is in action where a man hath only a bare right without any occupation or enjoyment.”

Book 2, 389.

Again he says:

"We will proceed next to take a short view of the nature of property in *action*, or such where a man hath not the occupation, but merely a bare right to occupy the thing in question, the possession whereof may, however, be recovered by a suit or action at law; from whence the thing so recoverable is called a thing or *chose in action*."

Book 2, 397.

A chose in action, or a thing in action is a term used in contradistinction to a chose, or thing in possession.

Ayers vs. West. R. R. Co., 48 Barb., 135.

A *chose in action* includes all rights to personal property not in possession, which may be enforced by action.

Gillett vs. Fairchild, 4 Den., 80.

A *chose in action* is defined to be the interest in a contract which in case of non-performance can only be reduced into beneficial enjoyment by an action or suit.

Haskell vs. Blair, 57 Mass., 534, 536.

A life insurance policy has been held to be a chose in action,

Prudential Life Ins. Co. vs. Hamm, 21 Ind.

App., 525, 529,

even before the death of the insured.

Steele vs. Gablin, 115 Ga., 929.

"It is a right of proceeding in a court of law to procure the payment of a sum of money. The term is used in contradistinction to choses in possession, which are chattels, of which one is in possession or control, such as corn, wheat, books and the like.

"One view has restricted the term to rights of action for money arising under contract, but while it comprehends these, whatever the contract, it is undoubtedly of much broader significance, and includes the right to recover pecuniary damages for a wrong inflicted either upon the person or property." Citing Gillett vs. Fairchild, *supra*; McKee vs. Judd, 12 N. Y., 622; Williams Per. Prop., 4.

3 Am. & Eng. Ency., 1st ed. Sub Tit.  
"Choses in Action," 236.

Pertinent, too, is the opinion of the Circuit Court of Appeals in Brown vs. Fletcher (206 Fed. Rep., 461), a case very similar in its character to that now before the court. It is a suit between the same complainants and this defendant-trustee to recover upon the assignment made by the same *cestui que trust* of another trust fund created under the same will. In that case the objection was raised, as now, to the court's jurisdiction.

Judge Learned Hand of the U. S. District Court, in overruling the demurrer to the jurisdiction, conceded, in his opinion, upon the question whether the interest of the *cestui que trust* in the sum of money held for him by the trustee was a *chose in action* under Section 24 of the Judiciary Act, that



such was, no doubt, the case in "strict legal theory," but he said that he did not think the *cestui que trust's* interest was what the statute meant by a *chose in action*. The cause went to hearing resulting in a decision on the merits in favor of the defendant. An appeal was taken to the Circuit Court of Appeals, and again it was objected by the defendant that the lower court did not have jurisdiction, and the Appellate Court dismissed the suit upon that and other grounds.

The cause is now pending in this court upon a writ of certiorari.

The Circuit Court of Appeals said in the case (206 Fed. Rep., 461) with reference to the assignment :

"This is clearly a *chose in action*, that is, a claim not in possession but which must be enforced by an action against the trustee. *Shelden vs. Sill* (49 U. S., 441). As their assignors could not maintain an action in the District Court, the complainants cannot."

### POINT III.

**Equitable assignments of CHOSSES IN ACTION, as well as legal assignments, are comprehended within the application of the statute.**

The assignment by Conrad Morris Braker, the *cestui que trust*, on April 18, 1901, of seven-tenths of his interest in the trust fund held by his trustee, Austin B. Fletcher, was an equitable assignment.

Chief Justice Marshall said in *Sire vs. Pitot* (6 Cranch, 323) :

"The words of the act are said to apply obviously to assignments made by the party himself on an actual note, or other chose in action assignable by the proprietor thereof \* \* \* without doubt assignable paper being the chose in action most usually transferred was in the minds of the legislature when the law was framed; and the words of the provision are therefore best adapted to that class of assignments. But there is no reason to believe that the legislature was not equally disposed to except from the jurisdiction of the federal courts those who could sue in virtue of equitable assignments and those who could sue in virtue of legal assignments. The assignee of all the open accounts of a merchant might, under certain circumstances, be permitted to sue in equity in his own name, and there would be as much reason to exclude him from the federal courts as to exclude the same person when the assignee of a particular note."

The foregoing case was referred to in *Corbin vs. Black Hawk County* (105 U. S., 659, 26 L. e., 1136) as one by which the principle was settled that the statute intended to except suits in virtue of equitable assignments, as well as suits by virtue of legal assignments.

#### POINT IV.

**The assumption of the appellants that the opinion of the court in *Ingersoll vs. Coram* is determinative as to the jurisdictional question in this suit is erroneous.**

The endeavor is made to show that the expression of the Court in *Ingersoll vs. Coram* (211 U. S.,

335, 53 L. ed., 208) is adverse to the defendants' contention in the present case, but the circumstances are totally different. In that case a bargain was made by would-be contestants for the employment of the legal services of Col. "Bob" Ingersoll, and his payment was to be made out of the amount that might be secured thereby. The matter involved the setting aside of the last will of Andrew J. Davis, a very wealthy man, and as a result of the suit instituted Ingersoll was successful in bringing about a compromise, and it was claimed that an equitable lien attached to the distributive shares so secured for the contestants, and that the suit by Ingersoll's widow and administratrix to have the Court declare and foreclose such lien on the distributive shares was, because it was based on the contract of employment, a suit within the statute governing federal jurisdiction of suits by assignees of choses in action. Justice McKenna said it was certainly very disputable if an interest in a distributive share of an estate is within the statute, and the inference is now begged that this Court will look upon the assignment made by Conrad Morris Braker of his interest in the trust fund held for his benefit by Austin B. Fletcher growing out of the estate of Conrad Braker, Jr., as an interest in a distributive share of an estate.

But the testamentary trust fund held by the defendant, Austin B. Fletcher, is not the distributive share of an estate of a decedent. True, it is a part of the estate of the testator, Braker. He founded the trust fund, but long before the execution of the assignments the fund was severed from the testator's estate by the act of his executors paying it into the hands of the trustee for the benefit of the

*cestui que trust* named in the will, and, eventually it was paid into Mr. Fletcher's hands, as trustee, under order of the court (par. 4, 5, 6 of bill). Unquestionably the *cestui que trust* could dispose of his equitable interest in the principal of the trust fund while it was being administered, and with the same positiveness it may be asserted that the purchaser of such an interest could enforce its payment to him by the trustee when the day arrived for its payment. But such an interest by a *cestui que trust* in a trust fund is quite a different one from that of an heir-at-law or next of kin in the estate of his ancestor. The interest of a *cestui que trust* in a testamentary trust fund is positive and fixed, but that of an heir or next of kin in an estate in the hands of an administrator or executor may be very vague and uncertain, subject to the discovery and payments of claims of creditors and the expenses of administration, and in this view it might be a doubtful matter whether the rights of an heir or next of kin is a chose in action.

In our case the estate of Conrad Braker, Jr., has been long since distributed; the executors of the estate have paid into the hands of the testamentary trustee the entire trust fund established by the will of the decedent, and no person other than the *cestui que trust* or his assignees have, so far as relates to the fund, any concern in its management and distribution. It is an interest capable of being assigned, and the assignees now, by their bill of complaint, ask that the Court will decree the payment over to them by the trustees of the assignee's part of the fund.

The assignment is of a *chose in action*, and the citizenship of the assignor precludes the lower court from taking cognizance of the suit.

**POINT V.**

**This suit is founded upon an assignment IN FACT made to the plaintiffs as distinguished from an assignment to them by OPERATION OF LAW.**

It will be seen by the eleventh paragraph of the bill (6) that the New York Finance Company, on the 5th day of March, 1902, assigned to William Brewster Wood, the plaintiffs' testator, as collateral security for the payment of its promissory note of the same date all its interest of whatever kind in the sixteenth paragraph of the will of Conrad Braker, Jr.—and by the twelfth paragraph of the bill (7) that ten years afterwards the said Finance Company sold and assigned absolutely all such interests to the plaintiffs, the executors of said William Brewster Wood.

Up to the time of the execution of this last-named assignment the said Finance Company had a right to redeem the pledge made by it of its interests referred to in said promissory note and accompanying assignment (Exhibits "C" and "D"). This note and assignment are to be read together. They are parts of the same transaction. The note provides what should be done by its holder upon a default in its payment, and the proceedings there outlined, unless afterwards changed, should have been carefully observed; however, such proceedings were obviated by an entirely new method adopted by the interested parties (Exhibit "E," 30-34). It will be seen that they first ascertained the amount due upon the promissory note; then an account was stated as to the amount of the indebtedness of the Finance Company to the said executors upon another and totally different obliga-

tion, foreign to this record, and, thereupon, a bargain was struck that in consideration of the Finance Company being given a credit of one hundred dollars upon the interest due on this last-named obligation, it would sell to the executors of the estate of William Brewster Wood any interest whatsoever it then had or might or could have in the described interest of twenty thousand dollars in the estate of Conrad Braker, Jr., deceased, so assigned by it to William Brewster Wood as collateral security for the debt of fifteen thousand dollars and interest under the promissory note.

The complainants seek to save themselves by invoking the case of *Chappedelaine vs. Deschenaux*, 4 Cranch, 306, and other such cases wherein it is asserted that assignees "by operation of law," as administrators or executors, who have taken up the burden of decedents' estates, are not within the statute in question. It is enough to say in opposition that they are, notwithstanding their assertion, assignees by their own contract of assignment. They are not passive agents; they are actors so far as concerns their conduct and relations with the New York Finance Company. By the very instrument on which they base their title (Exhibit "E," pages 30-31), it will be seen, that they, as executors, received this deed of assignment from the New York Finance Company; that an entirely new consideration passed between them, and that accounts were stated between them relating not only to the matter of the assignment made by Conrad Morris Braker, but to another loan made to their decedent.

By the brief of appellants now submitted, they seek to minimize the effect of the assignment (Exhibit "E") made to them on May 14, 1912, about seven years after their appointment as executors, and, in order to meet the assertion that it is not

as transferees by *operation of law* that they are suitors, but as transferees under an instrumentality of their own making, they now airily say that the fact that the New York Finance Company executed a "*release to them*" (as they now style the assignment) of its "*theoretical equity of redemption is wholly immaterial*," and they invite the Court to regard their averments in regard to it as "*surplusage*." To do so, then paragraph twelfth of the bill may be omitted. Omit that paragraph and the bill falls to pieces, but more important, for the feature of the controversy being considered, it shows the need of considering the instrument (Exhibit "E") by force of which they claim to have become absolutely entitled to \$20,000.00 of the trust fund, and observing that its execution was brought about by a novel consideration moving from the executors, constituted it an entirely new transaction—an assignment *in fact*.

## POINT VI.

**The decretal order of the District Court of the United States for the Southern District of New York should be affirmed, with costs, to the respective appellees without prejudice to the right of the plaintiffs to bring any suit they may be advised in the proper court.**

WILLIAM P. S. MELVIN,

Counsel for Appellee,    

Austin B. Fletcher, as Trustee, etc.

SAFFORD A. CRUMMEY,

Counsel for Appellee,

Conrad Morris Braker.

FILED

MAY 18 1914

JAMES D. MAHER

No. ~~1005~~ **455**

October Term, 1913.

## **Supreme Court of the United States**

**PROVIDENT LIFE AND TRUST COMPANY**  
and **CATHARINE STEWART WOOD**, Ex-  
ecutors of the Estate of William Brewster  
Wood, deceased,

Appellants,

vs.

**AUSTIN B. FLETCHER**, as Testamentary Trus-  
tee of Conrad Morris Braker, under the Last  
Will and Testament of Conrad Braker, Jr.,  
deceased, and **CONRAD MORRIS BRAKER**,

Appellees.

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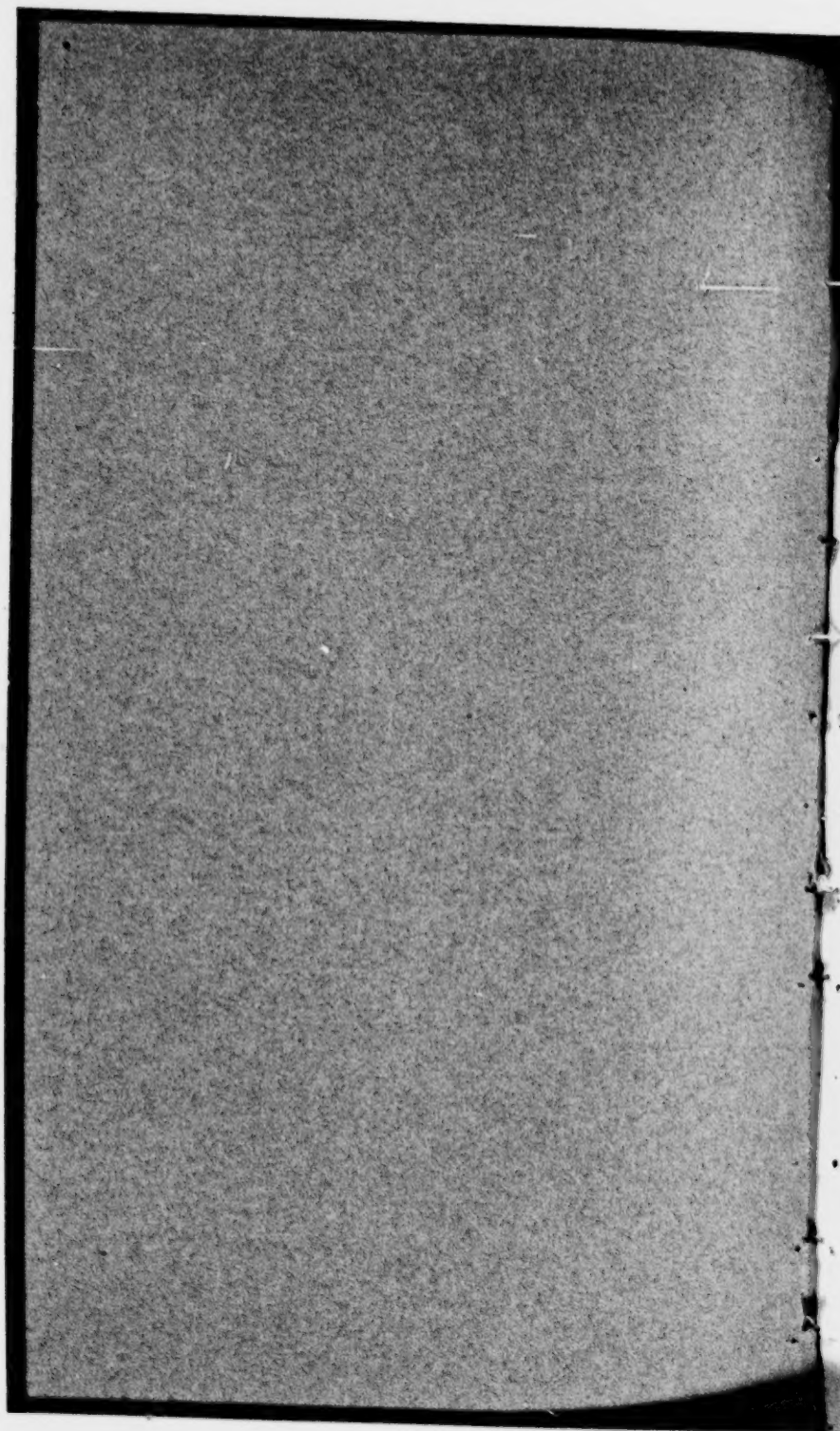
**SUPPLEMENTAL BRIEF ON PART  
OF AUSTIN B. FLETCHER, AS  
TRUSTEE, &c.**

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**WILLIAM P. S. MELVIN,**  
Solicitor for Defendant  
Austin B. Fletcher, Appellee.

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## Supreme Court of the United States

PROVIDENT LIFE AND TRUST COMPANY and CATHARINE STEWART WOOD, Executors of the Estate of William Brewster Wood, deceased,

Appellants,

VS.

AUSTIN B. FLETCHER, as Testamentary Trustee of Conrad Morris Braker, under the Last Will and Testament of Conrad Braker, Jr., deceased, and CONRAD MORRIS BRAKER,

Appellees.

### SUPPLEMENTAL BRIEF.

Counsel for appellee, Austin B. Fletcher, as trustee, etc., has no objection to this motion to advance the cause.

Counsel recognizes that under the rule of this Court (Rule 6) the motion to advance must be submitted in the first instance on printed briefs or arguments, but from authoritative information received at the office of the Clerk of the Court, it appears to be the uniform procedure of the Court that a motion to advance a cause draws with it simultaneous ~~by~~ the submission to the Court without oral argument, of the sole question at issue, as here, namely, whether the lower court had jurisdiction to take cognizance of the suit.

Counsel for appellee respectfully submits that should the court order the cause to be advanced, an oral argument thereof be directed. This course it seems would be consonant with the rule (22) allowing a certain time for oral argument in "cases involving solely the jurisdiction of the court below." Besides, reading sub-division 4 of Rule 6, and paraphrasing it, as we may, to make it suit conditions similar to those in the present case it would read as follows:

4. All motions to advance a case on the Docket, must be submitted in the first instance on printed briefs or arguments. If the court desires further argument on that subject [i. e., the subject of the advancement of the cause], it will be ordered in connection with the *hearing* on the merits [i. e., on the oral argument or voluntary submission of the question as to whether or not the lower court could take cognizance of the suit].

Since, under Rule 22 the appellee is allowed a certain time for an oral argument in such a case as that now before the court, why should the rule

cease to be operative because the case has been advanced?

It is respectfully suggested in conclusion that the cause be transferred to a "summary docket" for hearing at as early a day as practicable during the next term of the Court.

WILLIAM P. S. MELVIN,  
Counsel for Appellee,  
Austin B. Fletcher, as trustee, etc.



**No. 455.**

**October Term, 1914.**

NOV 30 1914

JAMES D. MAHER

CLERK

IN THE  
**Supreme Court of the United States.**

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**PROVIDENT LIFE AND TRUST COMPANY and  
CATHARINE STEWART WOOD, Executors of the  
Estate of William Brewster Wood, Deceased,**  
*Appellants,*

*v.*

**AUSTIN B. FLETCHER, as Testamentary Trustee of  
Conrad Morris Braker, under the Last Will and Testa-  
ment of Conrad Braker, Jr., Deceased, and CONRAD  
MORRIS BRAKER,**

*Appellees.*

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**Appeal from the District Court of the United States  
for the Southern District of New York.**

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**MEMORANDA IN REPLY TO BRIEF OF  
APPELLANTS.**

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**PERRY D. TRAFFORD,  
H. GORDON MCCOUCH,**  
*Solicitors for Appellants.*



IN THE  
Supreme Court of the United States.

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No. 455. October Term, 1914.

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PROVIDENT LIFE AND TRUST COMPANY, AND  
CATHARINE STEWART WOOD, EXECUTORS  
OF THE ESTATE OF WILLIAM BREWSTER WOOD, DE-  
CEASED,

*Appellants,*

*v.*

AUSTIN B. FLETCHER, AS TESTAMENTARY TRUSTEE  
OF CONRAD MORRIS BRAKER, UNDER THE LAST WILL  
AND TESTAMENT OF CONRAD BRAKER, JR., DECEASED,  
AND CONRAD MORRIS BRAKER,

*Appellees.*

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APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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FIRST: THE LANGUAGE OF SECTION 24 OF  
THE JUDICIAL CODE DID NOT ALTER THE  
EXISTING LAW.

It would seem that inasmuch as Mr. Chief Justice Marshall in *Sere v. Pitot*, 6 Cranch, 335, treated the word "contents" as not affecting the meaning of this provision, and as this decision has been always quoted in this Court with approval, the strongest possible direct evidence would be necessary to show that in codifying the laws of the United States into the Judicial Code an alteration of existing law was intended. But



in this case, the Journals of Congress afford us a complete demonstration of the fact that no change in existing law was intended.

When this clause was read, the Journal states:

“MR. NEWLANDS: I wish to make an inquiry of the Senator from Idaho. I observe that section 24 declares that—

No district court shall have cognizance (except upon foreign bills of exchange) to recover *upon any* promissory note or other chose in action in favor of any assignee, or of any subsequent holder if such instrument be payable to bearer and be not made by any corporation, unless such suit might have been prosecuted in such court to recover *upon such note or other chose in action* if no assignment had been made.

I presume the purpose of that is to prevent an assignment from being made in order to give the United States court jurisdiction.

MR. HEYBURN: That is the existing law, and it is a necessary limitation upon the jurisdiction of any United States court. Having merged the jurisdiction of the district and circuit courts, it appears here in a different order from that in which it appears in existing law, but it is nevertheless a necessary provision.

MR. NEWLANDS: I would ask the Senator upon what theory he excepts foreign bills of exchange? Is it upon the theory that a foreign bill of exchange as it relates to interstate and foreign commerce would come within the jurisdiction of the national courts?

MR. HEYBURN: It always has been so. There is no change in the law suggested by that provision, and it has existed from the beginning and is a necessary provision. Should the Senator desire further consideration of it, we can go deeper into it; but if the Senator will just refer to the law writ-

ten opposite, taking part 2 of the report which is in the Senator's desk, he will find the existing law printed opposite that section, so that he will be enabled to know exactly what change, if any, has been made. As a matter of fact, in paragraph 1 the condition is best stated by the statement of the committee here:

The jurisdiction of the circuit courts as to suits at common law, or on the ground of diverse citizenship, etc., is conferred by the first section of the act of August 13, 1888 (1 Supp., 433), the purpose of which was to correct the mistakes contained in an earlier act. In *United States v. Sayward* (160 U. S., 493, 498) the Supreme Court construed the language of that section, and proceeded to restate it in its own language. The committee in drafting this paragraph followed the language of the Supreme Court as construed in that case.

That is the note made by the committee, and it fully expresses the reason why we have carried that forward. We have used the exact language of the Supreme Court of the United States in stating the law, thus bringing up all controversies that may have existed before this time and crystallizing them into a section in the language of the decision itself.

MR. NEWLANDS: I have no objection whatever to the phraseology of this section. My attention was simply called to the term "foreign bill of exchange". I saw it was made an exception to the general rule declared in this section, and I have been contending that state banks engaged in interstate commerce and in foreign commerce were subject, like state railroads, to national control and direction with reference to safety devices that might be required in the interest of depositors. The contention has been made upon this floor that a bill of exchange was not regarded either as an instrument of interstate commerce or of foreign com-

merce, and I have been referred to a decision where an attempt was made by a State to impose a tax upon a broker who was engaged simply in selling foreign exchange, and who claimed that the tax upon that occupation was a burthen upon foreign commerce, and therefore could not be imposed by the State, where the tax was sustained. It has been contended that that case was conclusive that a bill of exchange was not an instrument either of interstate commerce or of foreign commerce.

I am glad to see that this section harmonizes with the view that I myself entertain, that it is a bill of exchange, either in interstate or foreign commerce, and is a matter that comes under the jurisdiction of the Nation instead of the States.

MR. HEYBURN: This limitation is intended to prevent the assignment of promissory notes and that class of paper to parties for the purpose of giving the federal court jurisdiction. That is all there is in it in the world. Foreign bills of exchange were excepted because of necessity, from the very nature of the transaction, it would not do to exclude them because they had been assigned. But this is intended to relieve the United States court from consideration of actions brought to recover on promissory notes that have been assigned for the purpose, or in order that they might come within the jurisdiction of the United States courts on the question of diverse citizenship. It has no other application or purpose. But, as I have said, it would not do to apply under that rule to foreign bills of exchange, because they come here already assigned. Foreign bills of exchange, from the very nature of the transaction, must be excepted from that rule, and that is all there is in that proposition.

MR. SUTHERLAND: I do not want to assent to any such proposition as the Senator from Nevada (Mr. Newlands) makes about this provision of the law. The court is not given jurisdiction over this matter because

it is a subject-matter of interstate commerce, but it is given jurisdiction upon the ground that there is diversity of citizenship.

The existing law has made certain exceptions, and I submit to the Senator from Nevada that this committee ought not to be called upon to defend the provisions of existing law. If they are unwise, the burden should be upon those who attack them. The committee inserted the law as it found it, and it will take sufficient of the time of the committee, if they are called upon to defend the changes which they made, without defending the provisions of existing law. In other words, if any Senator upon the floor thinks that existing law is not right, the burden should be upon him to point out where it is not right, and not call upon this committee to defend provisions of existing law.

MR. HEYBURN: I think that is an admirable statement of the case. The Revision Committee was not appointed for the purpose of substituting some legislation for existing law, but only for the purpose of codifying, revising, eliminating, and harmonizing, but always respecting the text and the principle involved in existing law.

MR. NEWLANDS: The Senator is not called upon to make any defense, because I have made no attack. All I wished an explanation."

**SECOND: THE PHRASE "CHOSE IN ACTION"  
AS USED AT THE TIME OF THE ADOPTION  
OF THE JUDICIARY ACT OF 1789, DID NOT  
INCLUDE AN INTEREST OF A *CESTUI QUE*  
*TRUST* IN AN EXECUTORY LIMITATION.**

Counsel for appellee have collected certain definitions of the term "chose in action". These definitions are, however, collected without reference to historical continuity and are not in some instances so fully stated as to convey the full meaning of the authority.

It is true that in Bouvier's Law Dictionary the term "choses in action" under the head "choses" is defined as "personal things of which the owner has not the possession, but merely a right of action for their possession", citing Blackstone's Commentaries. But it is far more important to observe that under the heading "choses in action" the same dictionary thus defines the term at length: "A right to receive or recover a debt or money for damage for breach of contract or for a tort connected with contract but which cannot be enforced without contract", citing Comyn's Digest, under the title of "biens".

In examining Comyn's Digest and Blackstone's Commentaries, we are within the 18th century itself, and it is therefore interesting to find that Comyn, enumerating those things which cannot be assigned at common law, separated them into three heads:

- A. Choses in action.
- B. Bare rights.
- C. Possibilities.

In the third subdivision Comyn puts the right of A in a future estate for years arising after a life estate, where the ultimate possession was dependent upon A's outliving the life tenant. Vol. 1, Comyn, title "Assignment", pages 696-697.

Counsel for the appellee give two quotations from Blackstone, on pages 12 and 13 of their brief, but they neglect to quote the conclusion, as follows: "Hence it may be collected, that all property in action depends entirely upon contracts, either express or implied; which are the only regular means of acquiring a chose in action". Book 2, chapter 25, page 396. It is in view of this 18th century use of the term "choses in action" that Mr. Justice Grier in *Sheldon v. Sill*, 49 U. S. 441, defined the term "choses in action" by saying: "It includes all the infinite varieties of contracts, covenants

and promises which confer on one party a right to recover a personal chattel or a sum of money by action".

Later, over seventy years after the Judiciary Act of 1789, in *Bushnell v. Kennedy*, Mr. Chief Justice Chase said, as quoted by counsel for appellee, "Under that comprehensive description are included all debts and all claims for damages for breach of contract, or for torts connected with contract". In that case the jurisdiction of the Circuit Court was sustained, and this Court regarded the use of the phrase "chose in action" in the Judiciary Act as being less comprehensive than the existing use of the term.

But nowhere, unless perhaps in some recent State Court decisions where the point has not been argued, is the phrase "chose in action" applied to an interest in a decedent's estate or to an executory interest of a cestui que trust. Certainly there is no decision of any United States Court to that effect until the decision of the Circuit Court of Appeals for the Second Circuit in *Brown v. Fletcher*, 206 Fed. 461, now before this Court on certiorari.

### THIRD: INGERSOLL V. CORAM CANNOT BE DISTINGUISHED FROM THE CASE AT BAR.

The attempt to distinguish this case is on the ground that in *Ingersoll v. Coram*, the Court had to deal with an undivided interest in a decedent's estate, and that in the case at bar we have the interest of a cestui que trust in a trust fund. And it is argued that, whereas an undivided interest in a decedent's estate is not a chose in action, an interest in an executory limitation is a chose in action.

The fundamental objection to this reasoning is that chose in action in the Judiciary Act of 1789 given its widest meaning was applicable only to the right to recover a debt or damages for breach of contract or for a tort connected with contract, and had nothing what-

ever to do with a decedent's estate where the rights are not created by contract at all. An interest in a trust estate is no more a right growing out of contract than is an undivided interest in a decedent's estate.

If the term "chose in action" were applicable to either, it would be far more applicable to an undetermined share in a decedent's estate than it would be to what, as in the case at bar, rises to the dignity of an equitable estate.

An equitable estate is not a "chose in action" because the legal title is vested in a trustee.

**FOURTH: THE BILL IS MAINTAINABLE ENTIRELY APART FROM THE AVERMENTS CONTAINED IN PARAGRAPH TWELVE OF THE BILL OF COMPLAINT.**

The twelfth paragraph of the bill of complaint recites the absolute release and assignment of \$20,000 by the New York Finance Company to the appellants. The preceding part of the Bill shows that they hold this assignment of \$20,000 as collateral security for an amount of principal and interest exceeding \$20,000. There can be no doubt that the appellants were and are entitled to maintain their action as collateral holders, entirely independent of the release and to receive exactly the same remedy, namely, the declaration that they are vested with the title to receive the \$20,000.

**PERRY D. TRAFFORD,  
H. GORDON McCOUCH,**  
*Solicitors for Appellants.*





Under § 294, Judicial Code, which is the statutory rule for construing that Code, the slight changes between the wording of the act of 1887 and that of § 24, Judicial Code, in regard to jurisdiction of the Federal court of suits by assignees was not intended to bring about any change in the law but merely the continuation of the existing statute. Federal Statutes have always permitted the vendee or assignee to sue in the United States courts to recover property or an interest in property when the requisite value and diversity of citizenship existed. *Barney v. Baltimore*, 6 Wall. 280.

Section 24, Judicial Code, does not deprive the District Court of jurisdiction to enforce an interest under an assignment by the *cestui que trust* of an interest in the estate to which the latter has a fixed right in the future. Such an assignment is not a chose in action payable to the assignee within the prohibition of § 24, but an evidence of the assignee's right, title and estate in the property.

CONRAD BRAKER, JR., of New York, died testate July 21, 1890. The fifteenth item of his will provided that the sum of \$50,000 should be held in trust and securely invested for the use of his son, Conrad Morris Braker, who was to receive the income until he attained the age of fifty-five, when the "principal should be paid to him and belong to him absolutely." If he failed to reach that age the property was to be held for the benefit of his wife for life with remainder to Henry Braker.

The sixteenth item directed that "one-half of all the rest, residue and remainder, both real and personal," of his estate should be held in trust for the use and benefit of Conrad Morris Braker, who was to receive the interest derived from said trust, until he attained the age of fifty-five when "the whole amount, less \$25,000, shall be paid and belong to him absolutely." If he failed to reach that age then the property was to pass to another son.

The amount realized from the residuum, described in the sixteenth item, aggregated \$120,000, and with the \$50,000 described in the fifteenth item of the will, was invested in property (not described) which is now held by Austin B. Fletcher, the duly appointed Testamentary Trustee.

On April 18, 1901, Conrad Morris Braker assigned to

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Frank L. Rabe "seven-tenths of all the estate, right, title and interest which he had in and to the principal sum of \$50,000 described in the 15th item of the will." Thereafter Rabe transferred and assigned this interest to the New York Finance Company.

On February 25, 1902, Conrad Morris Braker executed an instrument in which, subject to the assignment of \$35,000 above referred to, he "granted, bargained, sold, assigned, transferred and set over to the New York Finance Company all of his estate, right, title and interest of any kind, form or description whatsoever to the amount or extent of \$35,000 in and to the legacy of \$50,000, and also in and to a legacy of the part or share of the residuary estate to which he was entitled under and by virtue of the fifteenth and sixteenth paragraphs of the will of Conrad Braker, Jr., deceased."

By virtue of these two transfers the New York Finance Company claimed to be the owner of such interest in the fund or estates created under the fifteenth and sixteenth items of the will.

The Finance Company thereafter made a note for \$15,000, payable to William Brewster Wood, and secured the same by a transfer of its interests under the sixteenth item. It also made another note for \$10,000 to Brown, and Schermerhorn, Trustee for Clara Schermerhorn, and secured the same by a transfer of its interest under the fifteenth item.

These notes were not paid when they fell due and the New York Finance Company's equity of redemption was acquired by the respective holders of the two notes. In February, 1913, when Conrad Morris Braker attained the age of fifty-five, the respective holders of the notes and assignments demanded that the Trustee should pay over to them that to which they were entitled by virtue of the instruments aforesaid. The Trustee refused to comply and thereupon the Executors of Wood and the

Trustees of Clara Schermerhorn (all of whom were citizens and residents of Pennsylvania) brought suit in the United States District Court for the Southern District of New York against Fletcher, Trustee, and Conrad Morris Braker, beneficiary, both being citizens and residents of New York.

The two Bills were each prepared by the same counsel and were identical except that the Trustees of Schermerhorn sued for what had been assigned them under the fifteenth item. The Executors of Wood sued for the interest assigned them in the money or property mentioned in the fifteenth and sixteenth items of the will. In both suits it was alleged that the Complainants had acquired title by virtue of the sale, transfer and assignment executed by Conrad Morris Braker, and subsequent mesne conveyance. It was alleged that Complainants had been informed that he claimed the transfers signed by him to be void because made to secure usurious debts. Both Bills prayed that Braker should be enjoined from litigating the question of title in any other court; that the complainants' right under the assignments should be established by final decree, and that Fletcher, the Testamentary Trustee, should be ordered to pay over to the complainants what was due them by virtue of the respective assignments from Braker.

The court dismissed both bills and in each case gave a certificate that the order was based "solely on the ground that no jurisdiction of the District Court existed."

From that order the complainants appealed to this court.

*Mr. Charles H. Burr*, with whom *Mr. Frederic W. Frost*, *Mr. Perry D. Trafford* and *Mr. H. Gordon McCouch* were on the brief, for appellants:

The interpretation placed upon the provisions of § 629, Rev. Stat. (now § 24, 1st subd. Jud. Code) by this court in *Ingersoll v. Coram*, 211 U. S. 335, is decisive of the jurisdictional questions in this case.

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Argument for Appellees.

An interest in a distributive share of an estate (*a fortiori* in a trust fund) is not within the statute.

The prohibition is against suits by "an assignee" and neither an administrator nor an executor are regarded as assignees within the statute.

In support of these contentions see *Ambler v. Eppinger*, 137 U. S. 480; *Bertha Zinc & Mineral Co. v. Vaughan*, 88 Fed. Rep. 566; *Brown v. Fletcher*, 206 Fed. Rep. 461; *Bushnell v. Kennedy*, 9 Wall. 387; *Chappedelaine v. Dechenaux*, 4 Cr. 308; *Coal Company v. Blatchford*, 11 Wall. 172; *Croxall v. Shererd*, 5 Wall. 268; *Deshler v. Dodge*, 16 How. 622; *Fourth Street Bank v. Yardley*, 165 U. S. 634; *Rice v. Houston*, 13 Wall. 66; *Sere v. Pitot*, 6 Cr. 333.

Mr. William P. S. Melvin, with whom Mr. Safford A. Crummev was on the brief, for appellees:

The present statute fixing the jurisdiction of District Courts is unqualified in its expression that they cannot take cognizance of a suit to recover upon a chose in action in favor of any assignee unless such suit might have been prosecuted in the court if no assignment had been made. See § 24, Jud. Code, 1st subd.; § 11, Judiciary Act, 1789, 1 Stat. 78; Act of March 3, 1887; Act of August 13, 1888; *Sere v. Pitot*, 6 Cr. 335; *Corbin v. Black Hawk Co.*, 105 U. S. 659; *Shoecraft v. Bloxham*, 124 U. S. 730; *Deshler v. Dodge*, 16 How. 622; *Bushnell v. Kennedy*, 9 Wall. 387; *Ambler v. Eppinger*, 137 U. S. 480; and *Bertha Zinc Co. v. Vaughan*, 88 Fed. Rep. 566.

This court early defined what is a "chose in action" as the term is used in the statute, and the term has a familiar meaning in our law literature and decisions.

The term is one of comprehensive import. It includes all the infinite varieties of contracts, covenants and promises which confer on one party a right to recover a personal chattel or a sum of money by action. *Sheldon v. Sill*, 8 How. 441; *Bushnell v. Kennedy*, 9 Wall. 387;

*United States v. Moulton*, 27 Fed. Cas. 11, 12; *Mercantile Trust Co. v. Gubernat*, 143 N. Y. App. Div. 308; Bouvier's Law Dictionary; 2 Blackstone Comm. 389, 397; *Ayers v. West R. R.*, 48 Barb. 135; *Gillett v. Fairchild*, 4 Den. 80; *Haskell v. Blair*, 57 Massachusetts, 534, 536; *Prudential Life Ins. Co. v. Hann*, 21 Ind. App. 525; *Steele v. Gablin*, 115 Georgia, 929; 3 Am. & Eng. Ency., 1st ed. Sub. Tit. "Choses in Action," 236; *Brown v. Fletcher*, 206 Fed. Rep. 461.

Equitable assignments of choses in action, as well as legal assignments, are comprehended within the application of the statute. *Sere v. Pitot*, 6 Cr. 333; *Corbin v. Black Hawk County*, 105 U. S. 659.

*Ingersoll v. Coram*, 211 U. S. 335, is not adverse to the appellees' contention. The circumstances are totally different.

MR. JUSTICE LAMAR, after making the foregoing statement, delivered the opinion of the court.

The appellants brought suit in the United States District Court for the Southern District of New York for the purpose of recovering from the Trustee an interest in a trust estate which had been sold, transferred and assigned by Conrad Morris Braker, the beneficiary. The complainants were citizens and residents of Pennsylvania. Both defendants were citizens and residents of New York. Notwithstanding the diversity of citizenship, the court dismissed the bill on the ground that, as the assignor Braker, a citizen of New York, could not in the United States District Court, have sued Fletcher, Trustee and citizen of the same State, neither could the Complainants, his assignees, sue therein, even though they were residents of the State of Pennsylvania.

The appeal from that decision involves a construction of § 24 of the Judicial Code, which limits the jurisdiction of

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the United States District Court when suit is brought therein . . . "to recover upon any promissory note or other chose in action in favor of any assignee. . . ."

This section of the Judicial Code is the last expression of a policy intended to prevent certain assignees from proceeding in the United States courts.

The restriction was imposed not only to prevent fraudulent transfers, made for the purpose of conferring jurisdiction, but in apprehension that promissory notes and like papers might be transferred in good faith by the citizens of one State to those of another, and thus render the maker liable to suit in the Federal court. *United States Bank v. Planters' Bank*, 9 Wheat. 904, 909.

Except for a short time when the act of March 3, 1875, c. 137, 18 Stat. 470, restricted suits "founded on a contract in favor of an assignee," the several statutes on the subject, in force prior to the adoption of § 24, made this limitation on the jurisdiction of United States courts apply to "any suit to recover the contents of any promissory note or other chose in action in favor of any assignee" (Act of September 24, 1789, c. 20, 1 Stat. 73, 78, § 11; Rev. Stat., § 629; Act of March 3, 1887, c. 373, 24 Stat. 552; Act of August 13, 1888, c. 866, 25 Stat. 433, 434). These were technical terms of variable meaning. They might have been given a literal construction, in which case the act would not have wholly remedied the evil intended to be corrected. They were also susceptible of a construction so broad as to include subjects far beyond the congressional policy. For a "chose in action embraces in

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<sup>1</sup> " . . . No district court shall have cognizance of any suit (except upon foreign bills of exchange) to recover upon any promissory note or other chose in action in favor of any assignee, or of any subsequent holder if such instrument be payable to bearer and be not made by any corporation, unless such suit might have been prosecuted in such court to recover upon said note or other chose in action if no assignment had been made." 36 Stat. 1091.

one sense all rights of action." *Dundas v. Bowler*, 3 McLean, 204, 208. So that if the words of the statute had been given their most comprehensive meaning every assignee or vendee would have been prevented from suing in the United States court unless the assignor could have maintained the action. It is evident, however, that there was no intent to prevent assignees and purchasers of property from maintaining an action in the Federal court to recover such property, even though the purchaser was an assignee and the deed might, in a sense, be called a chose in action.

On the other hand, to construe the statute so as to only prohibit suits in such courts by the assignees of notes, drafts and written promises to pay, would have left open a wide field and enabled assignees of accounts and of claims arising out of breaches of contracts to proceed in the Federal courts, although the parties to the original agreement could not have there sued.

While, therefore, it was admitted in *Sere v. Pitot*, 6 Cranch, 332, that suits to recover the "contents of a chose in action" referred to "assignable paper," yet, in view of the general policy of the Act, these words were given a construction so broad as to include suits on accounts and on claims other than those containing written promises to pay.

That ruling, though criticized in *Bushnell v. Kennedy*, 9 Wall. 387, 393, was constantly followed (*Sheldon v. Sill*, 8 How. 441; *Shoecraft v. Bloxham*, 124 U. S. 730), and it has been settled that the prohibition applied not only to suits on instruments which might be said to have "contents," but also to suits for the recovery of "all debts, and all claims for damages for breach of contract, or for torts connected with a contract . . . but . . . not to suits to recover the specific thing or damages for its wrongful caption or detention." *Bushnell v. Kennedy*, 9 Wall. 387, 390, 391. *Ibid.* 392. Neither did it apply to suits

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for damages for neglect of duty. *Deshler v. Dodge*, 16 How. 622, 631; *Ambler v. Eppinger*, 137 U. S. 480.

Such is still the law under § 24; for, according to the statutory rule for construing the Judicial Code<sup>1</sup> it may be assumed that the slight difference in language between the act of 1887 ("contents of a chose in action in favor of the assignee") and § 24 ("suits upon a chose in action in favor of an assignee") was not intended to bring about any change in the law, but merely as a continuation of the existing statute. In continuing the statute Congress also carried forward the construction that the restriction on jurisdiction applied to suits for damages for breach of contract, but did not apply to suits for a breach of duty nor for a recovery of things. It therefore becomes necessary to determine whether these proceedings by Bill in Equity are suits by assignees on a chose in action; or, suits for the recovery of an interest in property by the transferee or assignee.

From the allegations of the two bills it appears that the \$50,000, mentioned in the fifteenth item, and the \$120,000, proceeds of the residuum of the estate referred to in the sixteenth item, had each been invested by the Trustee—but whether in real estate, tangible personal property, stocks or bonds is not stated.

If the trust estate consisted of land it would not be claimed that a deed conveying seven-tenths interest therein was a chose in action within the meaning of § 24 of the Judicial Code. If the funds had been invested in tangible personal property, there is, as pointed out in the *Bushnell Case*, nothing in § 24 to prevent the holder

<sup>1</sup> "SEC. 294. The provisions of this act, so far as they are substantially the same as existing statutes, shall be construed as continuations thereof, and not as new enactments, and there shall be no implication of a change of intent by reason of a change of words in such statute, unless such change of intent shall be clearly manifest." 36 Stat. 1167.



BROWN, AND SCHERMERHORN, TRUSTEE UNDER WILL OF CUNNINGHAM, *v.* FLETCHER, TRUSTEE OF BRAKER.

PROVIDENT LIFE AND TRUST COMPANY AS EXECUTOR OF WOOD *v.* SAME.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Nos. 454, 455. Argued December 1, 1914.—Decided January 5, 1915.

The prohibition against the Federal court entertaining jurisdiction of actions brought by assignees to recover upon a promissory note or other chose in action, as now embodied in § 24, Judicial Code, does not apply to a suit to recover a specific thing or damages for its wrongful detention or caption.

by virtue of a bill of sale from suing for the "recovery of the specific thing or damages for its wrongful caption or detention." And if the funds had been converted into cash, it was still so far property—in fact instead of in action—that the owner, so long as the money retained its earmarks, could recover it or the property into which it can be traced, from those having notice of the trust. In either case, and whatever its form, trust property was held by the Trustee,—not in opposition to the *cestui que trust* so as to give him a chose in action, but—in possession for his benefit in accordance with the terms of the testator's will.

It is said, however, that this case does not relate to the sale of land, or of things, or even to a transfer of a definite fund, but to two assignments of \$35,000,—to be made out of money or property in the hands of a trustee. It is claimed that this was an assignment of a chose in action within the meaning of § 24 of the Judicial Code. Giving the words of the statute the most extensive construction authorized by previous decisions, they can only refer to a chose in action based on contract. *Kolze v. Hoadley*, 200 U. S. 76, 83. The restriction on jurisdiction is limited to cases where A is indebted to B on an express or implied promise to pay; B assigns this debt or claim to C, and C as assignee of such debt sues A thereon or to foreclose the security. Or where A has contracted with B and B assigns the contract to C who sues to enforce his rights, by Bill for specific performance or, by an action for damages for breach of the contract. *Shoecraft v. Bloxham*, 124 U. S. 730, 735.

But here there was no contract and this is not a suit for a breach of a contract. For whatever may have been the earlier view of the subject (*Holmes Common Law*, 407, 409) the modern cases do not treat the relation between Trustee and *cestui que trust* as contractual. The rights of the beneficiary here depended not upon an agreement

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between him and Braker, but upon the terms of the will creating the trust and the duty which the law imposed upon the Trustee because of his fiduciary position. And a proceeding by the beneficiary or his assignee for the enforcement of rights in and to the property, held—not in opposition to but—for the benefit of the beneficiary, could not be treated as a suit on a contract, or as a suit for the recovery of the contents of a chose in action, or as a suit on a chose in action. *Upham v. Draper*, 157 Massachusetts, 292; *Herrick v. Snow*, 94 Maine, 310. See also *Edwards v. Bates*, 7 Man. & G. 590; *Nelson v. Howard*, 5 Maryland, 327.

The beneficiary here had an interest in and to the property that was more than a bare right and much more than a chose in action. For he had an admitted and recognized fixed right to the present enjoyment of the estate with a right to the corpus itself when he reached the age of fifty-five. His estate in the property thus in the possession of the Trustee, for his benefit, though defeasible, was alienable to the same extent as though in his own possession and passed by deed. *Ham v. Van Orden*, 84 N. Y. 257, 270; *Stringer v. Young, Trustee*, 191 N. Y. 157; *Lawrence v. Bayard*, 7 Paige, 70; *Woodward v. Woodward*, 16 N. J. (Eq.) 83, 84. The instrument by virtue of which that alienation was evidenced,—whether called a deed, a bill of sale, or an assignment,—was not a chose in action payable to the assignee, but an evidence of the assignee's right, title, and estate in and to property. Assuming that the transfer was not colorable or fraudulent, the Federal statutes have always permitted the vendee or assignee to sue in the United States courts to recover property or an interest in property when the requisite value and diversity of citizenship existed. *Barney v. Baltimore*, 6 Wall. 280. The equity jurisdiction of such courts extends to suits by heirs against executors and administrators (*Security Co. v. Black River Bank*, 187 U. S. 211, 228) and to suits against

Trustees for the recovery of an interest in the trust property by the beneficiary or his assignee.

The conclusion that § 24 of the Judicial Code did not deprive the District Court of jurisdiction, to enforce complainants' interest under the assignments executed by the *cestui que trust*, was foreshadowed in *Ingersoll v. Coram*, 211 U. S. 335, 361. That was a proceeding by an assignee to enforce an equitable lien on an heir's interest in an estate. In that case it was claimed that because the assignor could not have sued in the United States court, neither could the assignee maintain his Bill therein. The case was disposed of on another ground but the court said that "it is certainly very disputable if an interest in a distributive share of an estate is within the statute."

That language was used in reference to a suit for the recovery of part of a fund in the hands of an executor, who held primarily for the payment of the testator's debts. There the legatees, distributees and assignees had no such vested interest in specific property as is the case here, where all of the property in the hands of the Trustee was held for the purpose of paying the income to Braker until he reached the age of fifty-five, when the corpus was to be delivered to him [or to his assignees] in fee. That interest was transferable and the purchaser was not precluded by § 24 from suing in the United States court for the interest so transferred.

This view of the record makes it unnecessary to discuss the question as to whether the Executors of Wood could in any event be treated as assignees of the character referred to in § 24 (*Chappedelaine v. Dechenaux*, 4 Cranch, 305, 306), since their title was cast upon them by operation of law. The nature of the case is also such that we cannot consider the effect of an assignment of \$35,000 out of the \$50,000, if it shall appear that the trust estate in the hands of the Trustee consists of property and not of money. These are questions which the United States District

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Court for the Southern District of New York has jurisdiction to hear and determine between these residents and citizens of different States.

*Decrees reversed.*

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